NATIONAL AND COMMUNITY SERVICE ACT OF 1990

May 19, 2009

NATIONAL AND COMMUNITY SERVICE ACT OF 1990

(Public Law 101–610, Nov. 16, 1990, 104 Stat. 3127)

(42 U.S.C. 12501 et seq.)

[As Amended Through P.L. 111–13, Enacted April 21, 2009]

AN ACT To enhance national and community service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [42 U.S.C. 12501 note] SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National and Community Service Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purpose.

TITLE I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Subtitle A—General Provisions

Sec. 101. Definitions.
Sec. 102. Authority to make State grants.

Subtitle B—School-Based and Community-Based Service-Learning Programs

PART I—PROGRAMS FOR ELEMENTARY AND SECONDARY SCHOOL STUDENTS

Sec. 111. Purpose.
Sec. 111A. Definitions.
Sec. 112. Assistance to States, territories, and Indian tribes.
Sec. 112A. Allotments.
Sec. 113. Applications.
Sec. 114. Consideration of applications.
Sec. 115. Participation of students and teachers from private schools.
Sec. 116. Federal, State, and local contributions.
Sec. 117. Limitations on uses of funds.

PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

Sec. 118. Higher education innovative programs for community service.
Sec. 118A. Campuses of Service.

PART III—INNOVATIVE AND COMMUNITY-BASED SERVICE-LEARNING PROGRAMS AND RESEARCH

Sec. 119. Innovative and community-based service-learning programs and research.

PART IV—SERVICE-LEARNING IMPACT STUDY

Sec. 120. Study and report.

Subtitle C—National Service Trust Program

PART I—INVESTMENT IN NATIONAL SERVICE

Sec. 121. Authority to provide assistance and approved national service positions.
Sec. 122. National service programs eligible for program assistance.

Sec. 123. Types of national service positions eligible for approval for national service educational awards.
Sec. 124. Types of program assistance.
Sec. 126. Other special assistance.

PART II—APPLICATION AND APPROVAL PROCESS

Sec. 129. Provision of assistance and approved national service positions.
Sec. 129A. Educational awards only program.
Sec. 130. Application for assistance and approved national service positions.
Sec. 131. National service program assistance requirements.
Sec. 132. Ineligible service categories.
Sec. 132A. Prohibited activities and ineligible organizations.
Sec. 133. Consideration of applications.

PART III—NATIONAL SERVICE PARTICIPANTS

Sec. 137. Description of participants.
Sec. 138. Selection of national service participants.
Sec. 139. Terms of service.
Sec. 140. Living allowances for national service participants.
Sec. 141. National service educational awards.

Subtitle D—National Service Trust and Provision of Educational Awards

Sec. 145. Establishment of the National Service Trust.
Sec. 146. Individuals eligible to receive an educational award from the Trust.
Sec. 146A. Certifications of successful completion of terms of service.
Sec. 147. Determination of the amount of the educational award.
Sec. 148. Disbursement of educational awards.
Sec. 149. Approval process for approved positions.

Subtitle E—National Civilian Community Corps

Sec. 151. Purpose.
Sec. 152. Establishment of National Civilian Community Corps Program.
Sec. 153. National service program.
Sec. 154. Summer national service program.
Sec. 155. National Civilian Community Corps.
Sec. 156. Training.
Sec. 157. Service projects.
Sec. 158. Authorized benefits for Corps members.
Sec. 159. Administrative provisions.
Sec. 160. Status of Corps members and Corps personnel under Federal law.
Sec. 161. Contract and grant authority.
Sec. 162. Responsibilities of Department of Defense.
Sec. 163. Advisory board.
Sec. 164. Evaluations.
Sec. 165. Definitions.

Subtitle F—Administrative Provisions

Sec. 171. Family and medical leave.
Sec. 172. Reports.
Sec. 173. Supplementation.
Sec. 174. Prohibition on use of funds.
Sec. 175. Nondiscrimination.
Sec. 176. Notice, hearing, and grievance procedures.
Sec. 177. Nonduplication and nondisplacement.
Sec. 178. State Commissions on National and Community Service.
Sec. 179. Evaluation.
Sec. 179A. Civic Health Assessment and volunteering research and evaluation.
Sec. 180. Engagement of participants.
Sec. 181. Contingent extension.
Sec. 182. Partnerships with schools.
Sec. 183. Rights of access, examination, and copying.
Sec. 184. Drug-free workplace requirements.
Sec. 184A. Availability of assistance.
Sec. 185. Consolidated application and reporting requirements.
Sec. 186. Sustainability.
Sec. 187. Grant periods.

Sec. 188. Generation of volunteers.
Sec. 189. Limitation on program grant costs.
Sec. 189A. Matching requirements for severely economically distressed communities.
Sec. 189B. Audits and reports.
Sec. 189C. Restrictions on Federal Government and uses of Federal funds.
Sec. 189D. Criminal history checks.

Subtitle G—Corporation for National and Community Service

Sec. 191. Corporation for National and Community Service.
Sec. 192. Board of Directors.
Sec. 192A. Authorities and duties of the Board of Directors.
Sec. 193. Chief Executive Officer.
Sec. 193A. Authorities and duties of the Chief Executive Officer.
Sec. 194. Officers.
Sec. 195. Employees, consultants, and other personnel.
Sec. 196. Administration.
Sec. 196A. Corporation State offices.
Sec. 196B. Assignment to State Commissions.
Sec. 196C. Study of involvement of veterans.

Subtitle H—Investment for Quality and Innovation

PART I—ADDITIONAL CORPORATION ACTIVITIES TO SUPPORT NATIONAL SERVICE

Sec. 198. Additional corporation activities to support national service.
Sec. 198A. Presidential awards for service.
Sec. 198B. ServeAmerica Fellowships.
Sec. 198C. Silver Scholarships and Encore Fellowships.

PART II—NATIONAL SERVICE RESERVE CORPS

Sec. 198H. National Service Reserve Corps.

PART III—SOCIAL INNOVATION FUNDS PILOT PROGRAM

Sec. 198K. Funds.

PART IV—NATIONAL SERVICE PROGRAMS CLEARINGHOUSES; VOLUNTEER GENERATION FUND

Sec. 198O. National service programs clearinghouses.
Sec. 198P. Volunteer generation fund.

PART V—NONPROFIT CAPACITY BUILDING PROGRAM

Sec. 198S. Nonprofit capacity building.

Subtitle I—American Conservation and Youth Corps

Sec. 199. Short title.
Sec. 199A. General authority.
Sec. 199B. Limitation on purchase of capital equipment.
Sec. 199C. State application.
Sec. 199D. Focus of programs.
Sec. 199E. Related programs.
Sec. 199F. Public lands or Indian lands.
Sec. 199G. Training and education services.
Sec. 199H. Preference for certain projects.
Sec. 199I. Age and citizenship criteria for enrollment.
Sec. 199J. Use of volunteers.
Sec. 199K. Living allowance.
Sec. 199L. Joint programs.
Sec. 199M. Federal and State employee status.

Subtitle J—Training and Technical Assistance

Sec. 199N. Training and technical assistance.

TITLE II—MODIFICATIONS OF EXISTING PROGRAMS

Subtitle A—Publication

Sec. 201. Information for students.

Sec. 202. Exit counseling for borrowers.
Sec. 203. Department information on deferments and cancellations.
Sec. 204. Data on deferments and cancellations.

Subtitle B—Youthbuild Projects

Sec. 211. Youthbuild projects.

Subtitle C—Amendments to Student Literacy Corps

Sec. 221. Amendments to Student Literacy Corps.

TITLE IV—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

Sec. 401. Projects.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Amtrak waste disposal.
Sec. 602. Exchange program with countries in transition from totalitarianism to democracy.

SEC. 2. [42 U.S.C. 12501] FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Throughout the United States, there are pressing unmet human, educational, environmental, and public safety needs.

(2) Americans desire to affirm common responsibilities and shared values, and join together in positive experiences, that transcend race, religion, gender, age, disability, region, income, and education.

(3) The rising costs of postsecondary education are putting higher education out of reach for an increasing number of citizens.

(4) Americans of all ages can improve their communities and become better citizens through service to the United States.

(5) Nonprofit organizations, local governments, States, and the Federal Government are already supporting a wide variety of national service programs that deliver needed services in a cost-effective manner.

(6) Residents of low-income communities, especially youth and young adults, can be empowered through their service, and can help provide future community leadership.

(b) PURPOSE.—It is the purpose of this Act to—

(1) meet the unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers;

(2) renew the ethic of civic responsibility and the spirit of community and service throughout the varied and diverse communities of the United States;

(3) expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training;

[1] Section 1301(b) of Public Law 107–117 (115 Stat. 2339) amended this Act by inserting before title V a new title IV without making a conforming amendment to the table of sections.

(4) encourage citizens of the United States, regardless of age, income, geographic location, or disability, to engage in full-time or part-time national service;

(5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;

(6) expand and strengthen existing national service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and community;

(7) build on the existing organizational service infrastructure of Federal, State, and local programs, agencies, and communities to expand full-time and part-time service opportunities for all citizens;

(8) provide tangible benefits to the communities in which national service is performed;

(9) expand and strengthen service-learning programs through year-round opportunities, including opportunities during the summer months, to improve the education of children and youth and to maximize the benefits of national and community service, in order to renew the ethic of civic responsibility and the spirit of community for children and youth throughout the United States;

(10) assist in coordinating and strengthening Federal and other service opportunities, including opportunities for participation in emergency and disaster preparedness, relief, and recovery;

(11) increase service opportunities for the Nation's retiring professionals, including such opportunities for those retiring from the science, technical, engineering, and mathematics professions, to improve the education of the Nation's youth and keep America competitive in the global knowledge economy, and to further utilize the experience, knowledge, and skills of older individuals;

(12) encourage the continued service of the alumni of the national service programs, including service in times of national need;

(13) encourage individuals age 55 or older to partake of service opportunities;

(14) focus national service on the areas of national need such service has the capacity to address, such as improving education, increasing energy conservation, improving the health status of economically disadvantaged individuals, and improving economic opportunity for economically disadvantaged individuals;

(15) recognize and increase the impact of social entrepreneurs and other nonprofit community organizations in addressing national and local challenges;

(16) increase public and private investment in nonprofit community organizations that are effectively addressing national and local challenges and encourage such organizations to replicate and expand successful initiatives;

(17) leverage Federal investments to increase State, local, business, and philanthropic resources to address national and local challenges;

(18) support institutions of higher education that engage students in community service activities and provide high-quality service-learning opportunities; and

(19) recognize the expertise veterans can offer to national service programs, expand the participation of the veterans in the national service programs, and assist the families of veterans and members of the Armed Forces on active duty.

TITLE I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Subtitle A—General Provisions

SEC. 101. [42 U.S.C. 12511] DEFINITIONS.

For purposes of this title:

(1) ADULT VOLUNTEER.—The term "adult volunteer" means an individual, such as an older adult, an individual with a disability, a parent, or an employee of a business or public or private nonprofit organization, who—

(A) works without financial remuneration in an educational institution to assist students or out-of-school youth; and

(B) is beyond the age of compulsory school attendance in the State in which the educational institution is located.

(2) ALASKA NATIVE-SERVING INSTITUTION.—The term "Alaska Native-serving institution" has the meaning given the term in section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)).

(3) APPROVED NATIONAL SERVICE POSITION.—The term "approved national service position" means a national service position for which the Corporation has approved the provision of a national service educational award described in section 147 as one of the benefits to be provided for successful service in the position.

(4) APPROVED SILVER SCHOLAR POSITION.—The term "approved silver scholar position" means a position, in a program described in section 198C(a), for which the Corporation has approved the provision of a silver scholarship educational award as one of the benefits to be provided for successful service in the position.

(5) APPROVED SUMMER OF SERVICE POSITION.—The term "approved summer of service position" means a position, in a program described in section 119(c)(8), for which the Corporation has approved the provision of a summer of service educational award as one of the benefits to be provided for successful service in the position.

(6) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-SERVING INSTITUTION.—The term "Asian American and Native American Pacific Islander-serving institution" has the

meaning given the term in section 320(b) of the Higher Education Act of 1965 (20 U.S.C. 1059g(b)).

(7) AUTHORIZING COMMITTEES.—The term "authorizing committees" means the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(8) CARRY OUT.—The term "carry out", when used in connection with a national service program, means the planning, establishment, operation, expansion, or replication of the program.

(9) 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.

(10) COMMUNITY-BASED AGENCY.—The term "community-based agency" means a private nonprofit organization (including a church or other religious entity) that—

(A) is representative of a community or a significant segment of a community; and

(B) is engaged in meeting human, educational, environmental, or public safety community needs.

(11) COMMUNITY-BASED ENTITY.—The term "community-based entity" means a public or private nonprofit organization that—

(A) has experience with meeting unmet human, educational, environmental, or public safety needs; and

(B) meets other such criteria as the Chief Executive Officer may establish.

(12) CORPORATION.—The term "Corporation" means the Corporation for National and Community Service established under section 191.

(13) DISADVANTAGED YOUTH.—The term "disadvantaged youth" includes those youth who are economically disadvantaged and 1 or more of the following:

(A) Who are out-of-school youth, including out-of-school youth who are unemployed.

(B) Who are in or aging out of foster care.

(C) Who have limited English proficiency.

(D) Who are homeless or who have run away from home.

(E) Who are at-risk to leave secondary school without a diploma.

(F) Who are former juvenile offenders or at risk of delinquency.

(G) Who are individuals with disabilities.

(14) ECONOMICALLY DISADVANTAGED.—The term "economically disadvantaged" means, with respect to an individual, an individual who is determined by the Chief Executive Officer to be low-income according to the latest available data from the Department of Commerce.

(15) ELEMENTARY SCHOOL.—The term "elementary school" has the same meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965.

(16) ENCORE SERVICE PROGRAM.—The term "encore service program" means a program, carried out by an eligible entity as described in subsection (a), (b), or (c) of section 122, that—

(A) involves a significant number of participants age 55 or older in the program; and

(B) takes advantage of the skills and experience that such participants offer in the design and implementation of the program.

(17) HISPANIC-SERVING INSTITUTION.—The term "Hispanic-serving institution" has the meaning given such term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(18) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term "historically black college or university" means a part B institution, as defined in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(19) 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)).

(20) 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.

(21) INDIAN TRIBE.—The term "Indian tribe" means—

(A) 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 subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)),

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; and

(B) any tribal organization controlled, sanctioned, or chartered by an entity described in subparagraph (A).

(22) INDIVIDUAL WITH A DISABILITY.—Except as provided in section 175(a), the term "individual with a disability" has the meaning given the term in section 7(20)(B) of the Rehabilitation Act of 1973.

(23) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the same meaning given such term in sections 101(a) and 102(a)(1) of the Higher Education Act of 1965.

(24) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the same meaning given such term in sec-

tion 9101 of the Elementary and Secondary Education Act of 1965.

(25) MEDICALLY UNDERSERVED POPULATION.—The term "medically underserved population" has the meaning given that term in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3)).

(26) NATIONAL SERVICE LAWS.—The term "national service laws" means this Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(27) NATIVE AMERICAN-SERVING, NONTRIBAL INSTITUTION.—The term "Native American-serving, nontribal institution" has the meaning given the term in section 319(b) of the Higher Education Act of 1965 (20 U.S.C. 1059f(b)).

(28) NATIVE HAWAIIAN-SERVING INSTITUTION.—The term "Native Hawaiian-serving institution" has the meaning given the term in section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)).

(29) OUT-OF-SCHOOL YOUTH.—The term "out-of-school youth" means an individual who—

(A) has not attained the age of 27;

(B) has not completed college or the equivalent thereof; and

(C) is not enrolled in an elementary or secondary school or institution of higher education.

(30) PARTICIPANT.—

(A) IN GENERAL.—The term "participant" means—

(i) for purposes of subtitle C, an individual in an approved national service position; and

(ii) for purposes of any other provision of this Act, an individual enrolled in a program that receives assistance under this title.

(B) RULE.—A participant shall not be considered to be an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service.

(31) 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.

(32) PREDOMINANTLY BLACK INSTITUTION.—The term "Predominantly Black Institution" has the meaning given the term in section 318 of the Higher Education Act of 1965 (20 U.S.C. 1059e).

(33) PRINCIPLES OF SCIENTIFIC RESEARCH.—The term "principles of scientific research" means principles of research that—

(A) apply rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to the subject matter involved;

(B) present findings and make claims that are appropriate to, and supported by, the methods that have been employed; and

(C) include, appropriate to the research being conducted—

(i) use of systematic, empirical methods that draw on observation or experiment;

(ii) use of data analyses that are adequate to support the general findings;

(iii) reliance on measurements or observational methods that provide reliable and generalizable findings;

(iv) strong claims of causal relationships, only with research designs that eliminate plausible competing explanations for observed results, such as, but not limited to, random-assignment experiments;

(v) presentation of studies and methods in sufficient detail and clarity to allow for replication or, at a minimum, to offer the opportunity to build systematically on the findings of the research;

(vi) acceptance by a peer-reviewed journal or critique by a panel of independent experts through a comparably rigorous, objective, and scientific review; and

(vii) consistency of findings across multiple studies or sites to support the generality of results and conclusions.

(34) 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 section 112(a) (other than a program referred to in paragraph (3)(B) of such 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, 198G, 198H, or 198K, or an activity that could be funded under section 179A, 198, 198O, 198P, or 199N.

(35) PROJECT.—The term "project" means an activity, carried out through a program that receives assistance under this title, 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.

(36) QUALIFIED ORGANIZATION.—The term "qualified organization" means a public or private nonprofit organization with experience working with school-age youth that meets such criteria as the Chief Executive Officer may establish.

(37) SCHOOL-AGE YOUTH.—The term "school-age youth" means—

(A) individuals between the ages of 5 and 17, inclusive; and

(B) children with disabilities, as defined in section 602(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(3)), who receive services under part B of such Act.

(38) SCIENTIFICALLY VALID RESEARCH.—The term "scientifically valid research" includes applied research, basic research, and field-initiated research in which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

(39) SECONDARY SCHOOL.—The term "secondary school" has the same meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965.

(40) SERVICE-LEARNING.—The term "service-learning" means a method—

(A) under which students or participants learn and develop through active participation in thoughtfully organized service that—

(i) is conducted in and meets the needs of a community;

(ii) is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; and

(iii) helps foster civic responsibility; and

(B) that—

(i) 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

(ii) provides structured time for the students or participants to reflect on the service experience.

(41) SERVICE-LEARNING COORDINATOR.—The term "service-learning coordinator" means an individual who provides services as described in subsection (a)(3) or (b) of section 112.

(42) SERVICE SPONSOR.—The term "service sponsor" means an organization, or other entity, that has been selected to provide a placement for a participant.

(43) 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.

(44) STATE COMMISSION.—The term "State Commission" means a State Commission on National and Community Service maintained by a State pursuant to section 178. Except when used in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under such section to act in lieu of a State Commission.

(45) STATE EDUCATIONAL AGENCY.—The term "State educational agency" has the same meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965.

(46) STUDENT.—The term "student" means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(47) TERRITORY.—The term "territory" means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(48) TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY.—The term "tribally controlled college or university" has the meaning given such term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801).

(49) VETERAN.—The term "veteran" has the meaning given the term in section 101 of title 38, United States Code.

Subtitle B—School-Based and Community-Based Service-Learning Programs

PART I—PROGRAMS FOR ELEMENTARY AND SECONDARY SCHOOL STUDENTS

SEC. 111. [42 U.S.C. 12521] PURPOSE.

The purpose of this part is to promote service-learning as a strategy to—

(1) support high-quality service-learning projects that engage students in meeting community needs with demonstrable results, while enhancing students' academic and civic learning; and

(2) support efforts to build institutional capacity, including the training of educators, and to strengthen the service infrastructure to expand service opportunities.

SEC. 111A. [42 U.S.C. 12522] DEFINITIONS.

In this part:

(1) STATE.—The term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) STATE EDUCATIONAL AGENCY.—The term "State educational agency" means—

(A) a State educational agency (as defined in section 101) of a State; or

(B) for a State in which a State educational agency described in subparagraph (A) has designated a statewide entity under section 112(e), that designated statewide entity.

SEC. 112. [42 U.S.C. 12523] ASSISTANCE TO STATES, TERRITORIES, AND INDIAN TRIBES.

(a) ALLOTMENTS TO STATES, TERRITORIES, AND INDIAN TRIBES.—The Corporation, in consultation with the Secretary of Education, may make allotments to State educational agencies, territories, and Indian tribes to pay for the Federal share of—

(1) planning and building the capacity within the State, territory, or Indian tribe involved to implement service-learning programs that are based principally in elementary schools and secondary schools, including—

(A) providing training and professional development for teachers, supervisors, personnel from community-based entities (particularly with regard to the recruitment, utilization, and management of participants), and trainers, to be conducted by qualified individuals or organizations that have experience with service-learning;

(B) developing service-learning curricula, consistent with State or local academic content standards, to be integrated into academic programs, including curricula for an age-appropriate learning component that provides participants an opportunity to analyze and apply their service experiences;

(C) forming local partnerships described in paragraph (2) or (4)(D) to develop school-based service-learning programs in accordance with this part;

(D) devising appropriate methods for research on and evaluation of the educational value of service-learning and the effect of service-learning activities on communities;

(E) establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based entities with demonstrated effectiveness in working with school-age youth in their communities; and

(F) establishing effective outreach and dissemination of information to ensure the broadest possible participation of schools throughout the State, throughout the territory, or serving the Indian tribe involved with particular attention to schools not making adequate yearly 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.);

(2) implementing, operating, or expanding school-based service-learning programs, which may include paying for the cost of the recruitment, training, supervision, placement, salaries, and benefits of service-learning coordinators, through distribution by State educational agencies, territories, and Indian tribes of Federal funds made available under this part to projects operated by local partnerships among—

(A) local educational agencies; and

(B) 1 or more community partners that—

(i) shall include a public or private nonprofit organization that—

(I) has a demonstrated expertise in the provision of services to meet unmet human, education, environmental, or public safety needs;

(II) will make projects available for participants, who shall be students; and

(III) was in existence at least 1 year before the date on which the organization submitted an application under section 113; and

(ii) may include a private for-profit business, private elementary school or secondary school, or 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);

(3) planning of school-based service-learning programs, through distribution by State educational agencies, territories, and Indian tribes of Federal funds made available under this part to local educational agencies and Indian tribes, which planning may include paying for the cost of—

(A) the salaries and benefits of service-learning coordinators; or

(B) the recruitment, training and professional development, supervision, and placement of service-learning coordinators who may be participants in a program under subtitle C or receive a national service educational award

under subtitle D, 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),

who will identify the community partners described in paragraph (2)(B) and assist in the design and implementation of a program described in paragraph (2);

(4) implementing, operating, or expanding school-based service-learning programs to utilize adult volunteers in service-learning to improve the education of students, through distribution by State educational agencies, territories, and Indian tribes of Federal funds made available under this part to—

(A) local educational agencies;

(B) Indian tribes (except that an Indian tribe distributing funds under this paragraph is not eligible to be a recipient of those funds);

(C) public or private nonprofit organizations; or

(D) partnerships or combinations of local educational agencies, and entities described in subparagraph (B) or (C); and

(5) developing, as service-learning programs, civic engagement programs that promote a better understanding of—

(A) the principles of the Constitution, the heroes of United States history (including military heroes), and the meaning of the Pledge of Allegiance;

(B) how the Nation's government functions; and

(C) the importance of service in the Nation's character.

(b) DUTIES OF SERVICE-LEARNING COORDINATOR.—A service-learning coordinator referred to in paragraph (2) or (3) of subsection (a) shall provide services to a local partnership described in subsection (a)(2) or entity described in subsection (a)(3), respectively, that may include—

(1) providing technical assistance and information to, and facilitating the training of, teachers and assisting in the planning, development, execution, and evaluation of service-learning in their classrooms;

(2) assisting local partnerships described in subsection (a)(2) in the planning, development, and execution of service-learning projects, including summer of service programs;

(3) assisting schools and local educational agencies in developing school policies and practices that support the integration of service-learning into the curriculum; and

(4) carrying out such other duties as the local partnership or entity, respectively, may determine to be appropriate.

(c) RELATED EXPENSES.—An entity that receives financial assistance under this part from a State, territory, or Indian tribe may, in carrying out the activities described in subsection (a), use such assistance to pay for the Federal share of reasonable costs related to the supervision of participants, program administration, transportation, insurance, and evaluations and for other reasonable expenses related to the activities.

(d) SPECIAL RULE.—A State educational agency described in section 111A(2)(A) may designate a statewide entity (which may be

a community-based entity) with demonstrated experience in supporting or implementing service-learning programs, to receive the State educational agency's allotment under this part, and carry out the functions of the agency under this part.

(e) CONSULTATION WITH SECRETARY OF EDUCATION.—The Corporation is authorized to enter into agreements with the Secretary of Education for initiatives (and may use funds authorized under section 501(a)(6) to enter into the agreements if the additional costs of the initiatives are warranted) that may include—

(1) identification and dissemination of research findings on service-learning and scientifically valid research based practices for service-learning; and

(2) provision of professional development opportunities that—

(A) improve the quality of service-learning instruction and delivery for teachers both preservice and in-service, personnel from community-based entities and youth workers; and

(B) create and sustain effective partnerships for service-learning programs between local educational agencies, community-based entities, businesses, and other stakeholders.

SEC. 112A. [42 U.S.C. 12524] ALLOTMENTS.

(a) INDIAN TRIBES AND TERRITORIES.—Of the amounts appropriated to carry out this part for any fiscal year, the Corporation shall reserve an amount of not less than 2 percent and not more than 3 percent for payments to Indian tribes, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs.

(b) ALLOTMENTS THROUGH STATES.—

(1) IN GENERAL.—After reserving an amount under subsection (a), the Corporation shall use the remainder of the funds appropriated to carry out this part for the fiscal year as follows:

(A) ALLOTMENTS BASED ON SCHOOL-AGE YOUTH.—From 50 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 50 percent of such remainder as the number of school-age youth in the State bears to the total number of school-age youth in all States.

(B) ALLOTMENTS BASED ON ALLOCATIONS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—From 50 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 50 percent of such remainder as the allocation to the State for the previous fiscal year under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) bears to the total of such allocations to all States.

(2) MINIMUM AMOUNT.—For any fiscal year for which amounts appropriated for this subtitle exceed $50,000,000, the minimum allotment to each State under paragraph (1) shall be $75,000.

(c) REALLOTMENT.—If the Corporation determines that the allotment of a State, territory, or Indian tribe under this section will not be required for a fiscal year because the State, territory, or Indian tribe did not submit and receive approval of an application for the allotment under section 113, the Corporation shall make the allotment for such State, territory, or Indian tribe available for grants to community-based entities to carry out service-learning programs as described in section 112(b) in such State, in such territory, or for such Indian tribe. After community-based entities apply for grants from the allotment, by submitting an application at such time and in such manner as the Corporation requires, and receive approval, the remainder of such allotment shall be available for reallotment to such other States, territories, or Indian tribes with approved applications submitted under section 113 as the Corporation may determine to be appropriate.

SEC. 113. [42 U.S.C. 12525] APPLICATIONS.

(a) APPLICATIONS TO CORPORATION FOR ALLOTMENTS.—

(1) IN GENERAL.—To be eligible to receive an allotment under section 112A, a State, acting through the State educational agency, territory, or Indian tribe shall prepare and submit to the Corporation an application at such time and in such manner as the Chief Executive Officer may reasonably require, and obtain approval of the application.

(2) CONTENTS.—An application for an allotment under section 112 shall include—

(A) a proposal for a 3-year plan promoting service-learning, which shall contain such information as the Chief Executive Officer may reasonably require, including how the applicant will integrate service opportunities into the academic program of the participants;

(B) information about the criteria the State educational agency, territory, or Indian tribe will use to evaluate and grant approval to applications submitted under subsection (b), including an assurance that the State educational agency, territory, or Indian tribe will comply with the requirement in section 114(a);

(C) assurances about the applicant's efforts to—

(i) ensure that students of different ages, races, sexes, ethnic groups, disabilities, and economic backgrounds have opportunities to serve together;

(ii) include any opportunities for students, enrolled in schools or programs of education providing elementary or secondary education, to participate in service-learning programs and ensure that such service-learning programs include opportunities for such students to serve together;

(iii) involve participants in the design and operation of the programs;

(iv) promote service-learning in areas of greatest need, including low-income or rural areas; and

(v) otherwise integrate service opportunities into the academic program of the participants; and

(D) assurances that the applicant will comply with the nonduplication and nondisplacement requirements of section 177 and the notice, hearing, and grievance procedures required by section 176.

(b) APPLICATION TO STATE, TERRITORY, OR INDIAN TRIBE FOR ASSISTANCE TO CARRY OUT SCHOOL-BASED SERVICE-LEARNING PROGRAMS.—

(1) IN GENERAL.—Any—

(A) qualified organization, Indian tribe, territory, local educational agency, for-profit business, private elementary school or secondary school, or institution of higher education that desires to receive financial assistance under this subpart from a State, territory, or Indian tribe for an activity described in section 112(a)(1);

(B) partnership described in section 112(a)(2) that desires to receive such assistance from a State, territory, or Indian tribe for an activity described in section 112(a)(2);

(C) entity described in section 112(a)(3) that desires to receive such assistance from a State, territory, or Indian tribe for an activity described in such section;

(D) entity or partnership described in section 112(a)(4) that desires to receive such assistance from a State, territory, or Indian tribe for an activity described in such section; and

(E) entity that desires to receive such assistance from a State, territory, or Indian tribe for an activity described in section 111(a)(5),

shall prepare, submit to the State educational agency for the State, territory, or Indian tribe, and obtain approval of, an application for the program.

(2) SUBMISSION.—Such application shall be submitted at such time and in such manner, and shall contain such information, as the agency, territory, or Indian tribe may reasonably require.

SEC. 114. [42 U.S.C. 12526] CONSIDERATION OF APPLICATIONS.

(a) CRITERIA FOR LOCAL APPLICATIONS.—In providing assistance under this part, a State educational agency, territory, or Indian tribe (or the Corporation if section 112A(c) applies) shall consider criteria with respect to sustainability, replicability, innovation, and quality of programs.

(b) PRIORITY FOR LOCAL APPLICATIONS.—In providing assistance under this part, a State educational agency, territory, or Indian tribe (or the Corporation if section 112A(c) applies) shall give priority to entities that submit applications under section 113 with respect to service-learning programs described in section 111 that are in the greatest need of assistance, such as programs targeting low-income areas or serving economically disadvantaged youth.

(c) REJECTION OF APPLICATIONS TO CORPORATION.—If the Corporation rejects an application submitted by a State, territory, or Indian tribe under section 113 for an allotment, the Corporation shall promptly notify the State, territory, or Indian tribe of the reasons for the rejection of the application. The Corporation shall provide the State, territory, or Indian tribe with a reasonable oppor-

tunity to revise and resubmit the application and shall provide technical assistance, if needed, to the State, territory, or Indian tribe as part of the resubmission process. The Corporation shall promptly reconsider such resubmitted application.

SEC. 115. [42 U.S.C. 12527] PARTICIPATION OF STUDENTS AND TEACHERS FROM PRIVATE SCHOOLS.

(a) IN GENERAL.—To the extent consistent with the number of students in the State, in the territory, or served by the Indian tribe or in the school district of the local educational agency involved who are enrolled in private nonprofit elementary schools and secondary schools, such State, territory, or Indian tribe, or agency shall (after consultation with appropriate private school representatives) make provision—

(1) for the inclusion of services and arrangements for the benefit of such students so as to allow for the equitable participation of such students in the programs implemented to carry out the objectives and provide the benefits described in this part; and

(2) for the training of the teachers of such students so as to allow for the equitable participation of such teachers in the programs implemented to carry out the objectives and provide the benefits described in this part.

(b) WAIVER.—If a State, territory, Indian tribe, or local educational agency is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by subsection (a), or if the Corporation determines that a State, territory, Indian tribe, or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Chief Executive Officer shall waive such requirements and shall arrange for the provision of services to such students and teachers.

SEC. 116. [42 U.S.C. 12528] FEDERAL, STATE, AND LOCAL CONTRIBUTIONS.

(a) CORPORATION SHARE.—

(1) IN GENERAL.—The Corporation share of the cost of carrying out a program for which a grant is made from an allotment under this part—

(A) for new grants may not exceed 80 percent of the total cost of the program for the first year of the grant period, 65 percent for the second year, and 50 percent for each remaining year; and

(B) for continuing grants, may not exceed 50 percent of the total cost of the program.

(2) NONCORPORATION CONTRIBUTION.—In providing for the remaining share of the cost of carrying out such a program, each recipient of such a grant under this part—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services;

(B) except as provided in subparagraph (C), may provide for such share through Federal, State, or local sources, including private funds or donated services; and

(C) may not provide for such share through Federal funds made available under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(b) WAIVER.—The Chief Executive Officer may waive the requirements of subsection (a) in whole or in part with respect to any such program for any fiscal year, on a determination that such a waiver would be equitable due to a lack of resources at the local level.

SEC. 117. [42 U.S.C. 12529] LIMITATIONS ON USES OF FUNDS.

Not more than 6 percent of the amount of assistance received by a State, territory, or Indian tribe that is the original recipient of an allotment under this part for a fiscal year may be used to pay, in accordance with such standards as the Corporation may issue, for administrative costs, incurred by that recipient.

PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

SEC. 118. [42 U.S.C. 12561] HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE.

(a) PURPOSE.—It is the purpose of this part to expand participation in community service by supporting innovative community service programs through service-learning carried out through institutions of higher education, acting as civic institutions to meet the human, educational, environmental, or public safety needs of neighboring communities.

(b) GENERAL AUTHORITY.—The Corporation, in consultation with the Secretary of Education, is authorized to make grants to, and enter into contracts with, institutions of higher education (including a consortium of such institutions), and partnerships comprised of such institutions and of other public or private nonprofit organizations, to pay for the Federal share of the cost of—

(1) enabling such an institution or partnership to create or expand an organized community service program that—

(A) engenders a sense of social responsibility and commitment to the community in which the institution is located;

(B) provides projects for participants, who shall be students, faculty, administration, or staff of the institution, or residents of the community; and

(C) the institution or partnership may coordinate with service-learning curricula being offered in the academic curricula at the institution of higher education or at 1 or more members of the partnership;

(2) supporting student-initiated and student-designed community service projects through the program;

(3) strengthening the leadership and instructional capacity of institutions of higher education and their faculty, with respect to service-learning, by—

(A) including service-learning as a key component of the preservice teacher curricula of the institution to

strengthen the instructional capacity of teachers to provide service-learning at the elementary and secondary levels;

(B) including service-learning as a component of other curricula or academic programs (other than education curricula or programs), such as curricula or programs relating to nursing, medicine, criminal justice, or public policy; and

(C) encouraging the faculty of the institution to use service-learning methods throughout their curriculum;

(4) facilitating the integration of community service carried out under the program into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students can obtain credit for their community service projects;

(5) 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 through the community service program;

(6) strengthening the service infrastructure within institutions of higher education in the United States through the program; and

(7) 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.

(c) FEDERAL, STATE, AND LOCAL CONTRIBUTIONS.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of the cost of carrying out a program for which assistance is provided under this part may not exceed 50 percent of the total cost of the program.

(B) NON-FEDERAL CONTRIBUTION.—In providing for the remaining share of the cost of carrying out such a program, each recipient of a grant or contract under this part—

(i) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(ii) may provide for such share through State sources or local sources, including private funds or donated services.

(2) WAIVER.—The Chief Executive Officer may waive the requirements of paragraph (1) in whole or in part with respect to any such program for any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(d) APPLICATION FOR GRANT.—

(1) SUBMISSION.—To receive a grant or enter into a contract under this part, an institution or partnership shall prepare and submit to the Corporation, an application at such time, in such manner, and containing such information and assurances as the Corporation may reasonably require, and obtain approval of the application. In requesting applications for

assistance under this part, the Corporation shall specify such required information and assurances.

(2) CONTENTS.—An application submitted under paragraph (1) shall contain, at a minimum—

(A) assurances that—

(i) prior to the placement of a participant, the applicant will 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 such program, to prevent the displacement and protect the rights of such employees; and

(ii) the applicant will comply with the nonduplication and nondisplacement provisions of section 177 and the notice, hearing, and grievance procedures required by section 176; and

(B) such other assurances as the Chief Executive Officer may reasonably require.

(e) SPECIAL CONSIDERATION.—To the extent practicable, in making grants and entering into contracts under subsection (b), the Corporation shall give special consideration to applications submitted by, or applications from partnerships including, institutions serving primarily low-income populations, including—

(1) Alaska Native-serving institutions;

(2) Asian American and Native American Pacific Islander-serving institutions;

(3) Hispanic-serving institutions;

(4) historically black colleges and universities;

(5) Native American-serving, nontribal institutions;

(6) Native Hawaiian-serving institutions;

(7) Predominantly Black Institutions;

(8) tribally controlled colleges and universities; and

(9) community colleges serving predominantly minority populations.

(f) CONSIDERATIONS.—In making grants and entering into contracts under subsection (b), the Corporation shall take into consideration whether the applicants submit applications containing proposals that—

(1) demonstrate the commitment of the institution of higher education involved, other than by demonstrating the commitment of the students, to supporting the community service projects carried out under the program;

(2) specify the manner in which 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 partnership that will participate in the community service projects, such as a partnership comprised of—

(A) the institution;

(B)(i) a community-based agency;

(ii) a local government agency; or

(iii) a nonprofit entity that serves or involves school-age youth, older adults, or low-income communities; and

(C)(i) a student organization;

(ii) a department of the institution; or

(iii) 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 or partnership will use the assistance provided through the grant or contract to strengthen the service infrastructure in institutions of higher education;

(9) with respect to projects involving delivery of services, 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.

(g) FEDERAL WORK-STUDY.—To be eligible for assistance under this part, an institution of higher education shall 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.

(h) DEFINITION.—Notwithstanding section 101, as used in this part, the term "student" means an individual who is enrolled in an institution of higher education on a full- or part-time basis.

(i) NATIONAL SERVICE EDUCATIONAL AWARD.—A participant in a program funded under this part shall be eligible for the national service educational award described in subtitle D, if the participant served in an approved national service position.

SEC. 118A. [42 U.S.C. 12561a] CAMPUSES OF SERVICE.

(a) IN GENERAL.—The Corporation, after consultation with the Secretary of Education, may annually designate not more than 25 institutions of higher education as Campuses of Service, from among institutions nominated by State Commissions.

(b) APPLICATIONS FOR NOMINATION.—

(1) IN GENERAL.—To be eligible for a nomination to receive designation under subsection (a), and have an opportunity to apply for funds under subsection (d) for a fiscal year, an institution of higher education in a State shall submit an application to the State Commission at such time, in such manner,

and containing such information as the State Commission may require.

(2) CONTENTS.—At a minimum, the application shall include information specifying—

(A)(i) the number of undergraduate and, if applicable, graduate service-learning courses offered at such institution for the most recent full academic year preceding the fiscal year for which designation is sought; and

(ii) the number and percentage of undergraduate students and, if applicable, the number and percentage of graduate students at such institution who were enrolled in the corresponding courses described in clause (i), for such preceding academic year;

(B) the percentage of undergraduate students engaging in and, if applicable, the percentage of graduate students engaging in activities providing community services, as defined in section 441(c) of the Higher Education Act of 1965 (42 U.S.C. 2751(c)), during such preceding academic year, the quality of such activities, and the average amount of time spent, per student, engaged in such activities;

(C) for such preceding academic year, the percentage of Federal work-study funds made available to the institution under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.) that is used to compensate students employed in providing community services, as so defined, and a description of the efforts the institution undertakes to make available to students opportunities to provide such community services and be compensated through such work-study funds;

(D) at the discretion of the institution, information demonstrating the degree to which recent graduates of the institution, and all graduates of the institution, have obtained full-time public service employment in the nonprofit sector or government, with a private nonprofit organization or a Federal, State, or local public agency; and

(E) any programs the institution has in place to encourage or assist graduates of the institution to pursue careers in public service in the nonprofit sector or government.

(c) NOMINATIONS AND DESIGNATION.—

(1) NOMINATION.—

(A) IN GENERAL.—A State Commission that receives applications from institutions of higher education under subsection (b) may nominate, for designation under subsection (a), not more than 3 such institutions of higher education, consisting of—

(i) not more than one 4-year public institution of higher education;

(ii) not more than one 4-year private institution of higher education; and

(iii) not more than one 2-year institution of higher education.

(B) SUBMISSION.—The State Commission shall submit to the Corporation the name and application of each institution nominated by the State Commission under subparagraph (A).

(2) DESIGNATION.—The Corporation shall designate, under subsection (a), not more than 25 institutions of higher education from among the institutions nominated under paragraph (1). In making the designations, the Corporation shall, if feasible, designate various types of institutions, including institutions from each of the categories of institutions described in clauses (i), (ii), and (iii) of paragraph (1)(A).

(d) AWARDS.—

(1) IN GENERAL.—Using sums reserved under section 501(a)(1)(C) for Campuses of Service, the Corporation shall provide an award of funds to institutions designated under subsection (c), to be used by the institutions to develop or disseminate service-learning models and information on best practices regarding service-learning to other institutions of higher education.

(2) PLAN.—To be eligible to receive funds under this subsection, an institution designated under subsection (c) shall submit a plan to the Corporation describing how the institution intends to use the funds to develop or disseminate service-learning models and information on best practices regarding service-learning to other institutions of higher education.

(3) ALLOCATION.—The Corporation shall determine how the funds reserved under section 501(a)(1)(C) for Campuses of Service for a fiscal year will be allocated among the institutions submitting acceptable plans under paragraph (2). In determining the amount of funds to be allocated to such an institution, the Corporation shall consider the number of students at the institution, the quality and scope of the plan submitted by the institution under paragraph (2), and the institution's current (as of the date of submission of the plan) strategies to encourage or assist students to pursue public service careers in the nonprofit sector or government.

PART III—INNOVATIVE AND COMMUNITY-BASED SERVICE–LEARNING PROGRAMS AND RESEARCH

SEC. 119. [42 U.S.C. 12563] INNOVATIVE AND COMMUNITY-BASED SERVICE-LEARNING PROGRAMS AND RESEARCH.

(a) DEFINITIONS.—In this part:

(1) ELIGIBLE ENTITY.—The term "eligible entity" means a State educational agency, a State Commission, a territory, an Indian tribe, an institution of higher education, or a public or private nonprofit organization (including community-based entities), a public or private elementary school or secondary school, a local educational agency, a consortium of such entities, or a consortium of 2 or more such entities and a for-profit organization.

(2) ELIGIBLE PARTNERSHIP.—The term "eligible partnership" means a partnership that—

(A) shall include—

(i) 1 or more community-based entities that have demonstrated records of success in carrying out service-learning programs with economically disadvantaged students, and that meet such criteria as the Chief Executive Officer may establish; and

(ii) a local educational agency for which—

(I) a high number or percentage, as determined by the Corporation, of the students served by the agency are economically disadvantaged students; and

(II) the graduation rate (as defined in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in applicable regulations promulgated by the Department of Education for the secondary school students served by the agency is less than 70 percent; and

(B) may also include—

(i) a local government agency that is not described in subparagraph (A);

(ii) the office of the chief executive officer of a unit of general local government;

(iii) an institution of higher education;

(iv) a State Commission or State educational agency; or

(v) more than 1 local educational agency described in subclause (I).

(3) YOUTH ENGAGEMENT ZONE.—The term "youth engagement zone" means the area in which a youth engagement zone program is carried out.

(4) YOUTH ENGAGEMENT ZONE PROGRAM.—The term "youth engagement zone program" means a service-learning program in which members of an eligible partnership collaborate to provide coordinated school-based or community-based service-learning opportunities—

(A) in order to address a specific community challenge;

(B) for an increasing percentage of out-of-school youth and secondary school students served by a local educational agency; and

(C) in circumstances under which—

(i) not less than 90 percent of such students participate in service-learning activities as part of the program; or

(ii) service-learning is a part of the curriculum in all of the secondary schools served by the local educational agency.

(b) GENERAL AUTHORITY.—From the amounts appropriated to carry out this part for a fiscal year, the Corporation may make grants (which may include approved summer of service positions in the case of a grant for a program described in subsection (c)(8)) and fixed-amount grants (in accordance with section 129(l)) to eligible

entities or eligible partnerships, as appropriate, for programs and activities described in subsection (c).

(c) AUTHORIZED ACTIVITIES.—Funds under this part may be used to—

(1) integrate service-learning programs into the science, technology, engineering, and mathematics (referred to in this part as "STEM") curricula at the elementary, secondary, postsecondary, or postbaccalaureate levels in coordination with practicing or retired STEM professionals;

(2) involve students in service-learning programs focusing on energy conservation in their community, including conducting educational outreach on energy conservation and working to improve energy efficiency in low-income housing and in public spaces;

(3) involve students in service-learning programs in emergency and disaster preparedness;

(4) involve students in service-learning programs aimed at improving access to and obtaining the benefits from computers and other emerging technologies, including improving such access for individuals with disabilities, in low-income or rural communities, in senior centers and communities, in schools, in libraries, and in other public spaces;

(5) involve high school age youth in the mentoring of middle school youth while involving all participants in service-learning to seek to meet unmet human, educational, environmental, public safety, or emergency and disaster preparedness needs in their community;

(6) conduct research and evaluations on service-learning, including service-learning in middle schools, and disseminate such research and evaluations widely;

(7) conduct innovative and creative activities as described in section 112(a);

(8) establish or implement summer of service programs (giving priority to programs that enroll youth who will be enrolled in any of grades 6 through 9 at the end of the summer concerned) during the summer months (including recruiting, training, and placing service-learning coordinators)—

(A) for youth who will be enrolled in any of grades 6 through 12 at the end of the summer concerned; and

(B) for community-based service-learning projects—

(i) that shall—

(I) meet unmet human, educational, environmental (including energy conservation and stewardship), and emergency and disaster preparedness and other public safety needs; and

(II) be intensive, structured, supervised, and designed to produce identifiable improvements to the community;

(ii) that may include the extension of academic year service-learning programs into the summer months; and

(iii) under which a student who completes 100 hours of service as described in section 146(b)(2), shall be eligible for a summer of service educational award

of $500 or $750 as described in sections 146(a)(2)(C) and 147(d);

(9) establish or implement youth engagement zone programs in youth engagement zones, for students in secondary schools served by local educational agencies for which a majority of such students do not participate in service-learning activities that are—

(A) carried out by eligible partnerships; and

(B) designed to—

(i) involve all students in secondary schools served by the local educational agency in service-learning to address a specific community challenge;

(ii) improve student engagement, including student attendance and student behavior, and student achievement, graduation rates, and college-going rates at secondary schools; and

(iii) involve an increasing percentage of students in secondary school and out-of-school youth in the community in school-based or community-based service-learning activities each year, with the goal of involving all students in secondary schools served by the local educational agency and involving an increasing percentage of the out-of-school youth in service-learning activities; and

(10) conduct semester of service programs that—

(A) provide opportunities for secondary school students to participate in a semester of coordinated school-based or community-based service-learning opportunities for a minimum of 70 hours (of which at least a third will be spent participating in field-based activities) over a semester, to address specific community challenges;

(B) engage as participants high percentages or numbers of economically disadvantaged students;

(C) allow participants to receive academic credit, for the time spent in the classroom and in the field for the program, that is equivalent to the academic credit for any class of equivalent length and with an equivalent time commitment; and

(D) ensure that the classroom-based instruction component of the program is integrated into the academic program of the local educational agency involved; and

(11) carry out any other innovative service-learning programs or research that the Corporation considers appropriate.

(d) APPLICATIONS.—To be eligible to receive a grant to carry out a program or activity under this part, an entity or partnership, as appropriate, shall prepare and submit to the Corporation an application at such time and in such manner as the Chief Executive Officer may reasonably require, and obtain approval of the application.

(e) PRIORITY.—In making grants under this part, the Corporation shall give priority to applicants proposing to—

(1) involve students and community stakeholders in the design and implementation of service-learning programs carried out using funds received under this part;

(2) implement service-learning programs in low-income or rural communities; and

(3) utilize adult volunteers, including tapping the resources of retired and retiring adults, in the planning and implementation of service-learning programs.

(f) REQUIREMENTS.—

(1) TERM.—Each program or activity funded under this part shall be carried out over a period of 3 years, which may include 1 planning year. In the case of a program funded under this part, the 3-year period may be extended by 1 year, if the program meets performance levels established in accordance with section 179(k) and any other criteria determined by the Corporation.

(2) COLLABORATION ENCOURAGED.—Each entity carrying out a program or activity funded under this part shall, to the extent practicable, collaborate with entities carrying out programs under this subtitle, subtitle C, and titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq., 5001 et seq.).

(3) EVALUATION.—Not later than 4 years after the effective date of the Serve America Act, the Corporation shall conduct an independent evaluation of the programs and activities carried out using funds made available under this part, and determine best practices relating to service-learning and recommendations for improvement of those programs and activities. The Corporation shall widely disseminate the results of the evaluations, and information on the best practices and recommendations to the service community through multiple channels, including the Corporation's Resource Center or a clearinghouse of effective strategies.

PART IV—SERVICE-LEARNING IMPACT STUDY

SEC. 120. [42 U.S.C. 12565] STUDY AND REPORT.

(a) STUDY.—

(1) IN GENERAL.—From the sums reserved under section 501(a)(1)(B) for this section, the Corporation shall enter into a contract with an entity that is not otherwise a recipient of financial assistance under this subtitle, to conduct a 10-year longitudinal study on the impact of the activities carried out under this subtitle.

(2) CONTENTS.—In conducting the study, the entity shall consider the impact of service-learning activities carried out under this subtitle on students participating in such activities, including in particular examining the degree to which the activities—

(A) improved student academic achievement;

(B) improved student engagement;

(C) improved graduation rates, as defined in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in applicable regulations promulgated by the Department of Education; and

(D) improved the degree to which the participants in the activities engaged in subsequent national service, volunteering, or other service activities, or pursued careers in public service, in the nonprofit sector or government.

(3) ANALYSIS.—In carrying out such study, the entity shall examine the impact of the service-learning activities on the 4 factors described in subparagraphs (A) through (D) of paragraph (2), analyzed in terms of how much time participants were engaged in service-learning activities.

(4) BEST PRACTICES.—The entity shall collect information on best practices concerning using service-learning activities to improve the 4 factors.

(b) INTERIM REPORTS.—The entity shall periodically submit reports to the Corporation containing the interim results of the study and the information on best practices. The Corporation shall submit such reports to the authorizing committees.

(c) FINAL REPORT.—The entity shall submit a report to the Corporation containing the results of the study and the information on best practices. The Corporation shall submit such report to the authorizing committees, and shall make such report available to the public on the Corporation's website.

(d) CONSULTATION AND DISSEMINATION.—On receiving the report described in subsection (c), the Corporation shall consult with the Secretary of Education to review the results of the study, and to identify best practices concerning using service-learning activities to improve the 4 factors described in subparagraphs (A) through (D) of subsection (a)(2). The Corporation shall disseminate information on the identified best practices.

Subtitle C—National Service Trust Program

PART I—INVESTMENT IN NATIONAL SERVICE

SEC. 121. [42 U.S.C. 12571] AUTHORITY TO PROVIDE ASSISTANCE AND APPROVED NATIONAL SERVICE POSITIONS.

(a) PROVISION OF ASSISTANCE.—Subject to the availability of appropriations for this purpose, the Corporation for National and Community Service may make grants to States, subdivisions of States, territories, Indian tribes, public or private nonprofit organizations, and institutions of higher education for the purpose of assisting the recipients of the grants—

(1) to carry out full- or part-time national service programs, including summer programs, described in subsection (a), (b), or (c) of section 122; and

(2) to make grants in support of other national service programs described in subsection (a), (b), or (c) of section 122 that are carried out by other entities.

(b) RESTRICTIONS ON AGREEMENTS WITH FEDERAL AGENCIES.—

(1) AGREEMENTS AUTHORIZED.—The Corporation may enter into an interagency agreement (other than a grant agreement) with another Federal agency to support a national service program carried out or otherwise supported by the agency. The

Corporation, in entering into the interagency agreement may approve positions as approved national service positions for a program carried out or otherwise supported by the agency.

(2) PROHIBITION ON GRANTS.—The Corporation may not provide a grant under this section to a Federal agency.

(3) CONSULTATION WITH STATE COMMISSIONS.—A Federal agency carrying out or supporting a national service program shall consult with the State Commissions for those States in which projects will be conducted through that program in order to ensure that the projects do not duplicate projects conducted by State or local national service programs.

(4) SUPPORT FOR OTHER NATIONAL SERVICE PROGRAMS.—A Federal agency that enters into an interagency agreement under paragraph (1) shall, in an appropriate case, enter into a contract or cooperative agreement with an entity that is carrying out a national service program in a State that is in existence in the State as of the date of the contract or cooperative agreement and is of high quality, in order to support the national service program.

(5) APPLICATION OF REQUIREMENTS.—A requirement under this Act that applies to an entity receiving assistance under section 121 (other than a requirement limited to an entity receiving assistance under section 121(a)) shall be considered to apply to a Federal agency that enters into an interagency agreement under this subsection, even though no Federal agency may receive financial assistance under such an agreement.

(c) PROVISION OF APPROVED NATIONAL SERVICE POSITIONS.—As part of the provision of assistance under subsection (a), and in providing approved national service positions under subsection (b), the Corporation shall—

(1) approve the provision of national service educational awards described in subtitle D for the participants who serve in national service programs carried out using such assistance; and

(2) deposit in the National Service Trust established in section 145(a) an amount equal to the product of—

(A) the value of a national service educational award under section 147; and

(B) the total number of approved national service positions to be provided or otherwise approved.

(d) FIVE PERCENT LIMITATION ON ADMINISTRATIVE COSTS.—

(1) LIMITATION.—Not more than 5 percent of the amount of assistance provided to the original recipient of a grant or transfer of assistance under subsection (a) for a fiscal year may be used to pay for administrative costs incurred by—

(A) the recipient of the assistance; and

(B) national service programs carried out or supported with the assistance.

(2) RULES ON USE.—The Corporation may by rule prescribe the manner and extent to which—

(A) assistance provided under subsection (a) may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient of the grant or transfer of assistance under such subsection; and

(ii) national service programs carried out or supported with the assistance.

(e) MATCHING FUNDS REQUIREMENTS.—

(1) REQUIREMENTS.—Except as provided in section 140, the Corporation share of the cost (including the costs of member living allowances, employment-related taxes, health care coverage, and workers' compensation and other necessary operation costs) of carrying out a national service program that receives the assistance under subsection (a), whether the assistance is provided directly or as a subgrant from the original recipient of the assistance, may not exceed 75 percent of such cost.

(2) CALCULATION.—In providing for the remaining share of the cost of carrying out a national service program, the program—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or other Federal sources (other than the use of funds made available under the national service laws).

(3) COST OF HEALTH CARE.—In providing a payment in cash under paragraph (2)(A) as part of providing for the remaining share of the cost of carrying out a national service program, the program may count not more than 85 percent of the cost of providing a health care policy described in section 140(d)(2) toward such share.

(4) WAIVER.—The Corporation may waive in whole or in part the requirements of paragraph (1) with respect to a national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(5) OTHER FEDERAL FUNDS.—

(A) RECIPIENT REPORT.—A recipient of assistance under this section (other than a recipient of assistance through a fixed-amount grant in accordance with section 129(l)) shall report to the Corporation the amount and source of any Federal funds used to carry out the program for which the assistance is made available other than those provided by the Corporation.

(B) CORPORATION REPORT.—The Corporation shall report to the authorizing committees on an annual basis information regarding each recipient of such assistance that uses Federal funds other than those provided by the Corporation to carry out such a program, including the amounts and sources of the other Federal funds.

(f) PLAN FOR APPROVED NATIONAL SERVICE POSITIONS.—The Corporation shall—

(1) develop a plan to—

(A) establish the number of the approved national service positions as 88,000 for fiscal year 2010;

(B) increase the number of the approved positions to—

(i) 115,000 for fiscal year 2011;

(ii) 140,000 for fiscal year 2012;

(iii) 170,000 for fiscal year 2013;

(iv) 200,000 for fiscal year 2014;

(v) 210,000 for fiscal year 2015;

(vi) 235,000 for fiscal year 2016; and

(vii) 250,000 for fiscal year 2017;

(C) ensure that the increases described in subparagraph (B) are achieved through an appropriate balance of full- and part-time service positions;

(2) not later than 1 year after the date of enactment of the Serve America Act, submit a report to the authorizing committees on the status of the plan described in paragraph (1); and

(3) subject to the availability of appropriations and quality service opportunities, implement the plan described in paragraph (1).

SEC. 122. [42 U.S.C. 12572] NATIONAL SERVICE PROGRAMS ELIGIBLE FOR PROGRAM ASSISTANCE.

(a) NATIONAL SERVICE CORPS.—The recipient of a grant under section 121(a) and a Federal agency operating or supporting a national service program under section 121(b) shall use a portion of the financial assistance or positions involved, directly or through subgrants to other entities, to support or carry out the following national service corps or programs, as full- or part-time corps or programs, to address unmet needs:

(1) EDUCATION CORPS.—

(A) IN GENERAL.—The recipient may carry out national service programs through an Education Corps that identifies and meets unmet educational needs within communities through activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

(B) ACTIVITIES.—An Education Corps described in this paragraph may carry out activities such as—

(i) tutoring, or providing other academic support to elementary school and secondary school students;

(ii) improving school climate;

(iii) mentoring students, including adult or peer mentoring;

(iv) linking needed integrated services and comprehensive supports with students, their families, and their public schools;

(v) providing assistance to a school in expanding the school day by strengthening the quality of staff and expanding the academic programming offered in an expanded learning time initiative, a program of a 21st century community learning center (as defined in section 4201 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7171)), or a high-quality after-school program;

(vi) assisting schools and local educational agencies in improving and expanding high-quality service-learning programs that keep students engaged in schools by carrying out programs that provide specialized training to individuals in service-learning, and place the individuals (after such training) in positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of subtitle B;

(vii) assisting students in being prepared for college-level work;

(viii) involving family members of students in supporting teachers and students;

(ix) conducting a preprofessional training program in which students enrolled in an institution of higher education—

(I) receive training (which may include classes containing service-learning) in specified fields including early childhood education and care, elementary and secondary education, and other fields such as those relating to health services, criminal justice, environmental stewardship and conservation, or public safety;

(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 unmet human, educational, environmental, or public safety needs related to such training;

(x) assisting economically disadvantaged students in navigating the college admissions process;

(xi) providing other activities, addressing unmet educational needs, that the Corporation may designate; or

(xii) providing skilled musicians and artists to promote greater community unity through the use of music and arts education and engagement through work in low-income communities, and education, health care, and therapeutic settings, and other work in the public domain with citizens of all ages.

(C) EDUCATION CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

(i) student engagement, including student attendance and student behavior;

(ii) student academic achievement;

(iii) secondary school graduation rates as defined in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in applicable regulations promulgated by the Department of Education;

(iv) rate of college enrollment and continued college enrollment for recipients of a high school diploma;

(v) any additional indicator relating to improving education for students that the Corporation, in consultation (as appropriate) with the Secretary of Education, establishes; or

(vi) any additional local indicator (applicable to a particular recipient and on which an improvement in performance is needed) relating to improving education for students, that is approved by the Corporation or a State Commission.

(2) HEALTHY FUTURES CORPS.—

(A) IN GENERAL.—The recipient may carry out national service programs through a Healthy Futures Corps that identifies and meets unmet health needs within communities through activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

(B) ACTIVITIES.—A Healthy Futures Corps described in this paragraph may carry out activities such as—

(i) assisting economically disadvantaged individuals in navigating the health services system;

(ii) assisting individuals in obtaining access to health services, including oral health services, for themselves or their children;

(iii) educating economically disadvantaged individuals and individuals who are members of medically underserved populations about, and engaging individuals described in this clause in, initiatives regarding navigating the health services system and regarding disease prevention and health promotion, with a particular focus on common health conditions, chronic diseases, and conditions, for which disease prevention and health promotion measures exist and for which socioeconomic, geographic, and racial and ethnic health disparities exist;

(iv) improving the literacy of patients regarding health, including oral health;

(v) providing translation services at clinics and in emergency rooms to improve health services;

(vi) providing services designed to meet the health needs of rural communities, including the recruitment of youth to work in health professions in such communities;

(vii) assisting in health promotion interventions that improve health status, and helping people adopt and maintain healthy lifestyles and habits to improve health status;

(viii) addressing childhood obesity through in-school and after-school physical activities, and providing nutrition education to students, in elementary schools and secondary schools; or

(ix) providing activities, addressing unmet health needs, that the Corporation may designate.

(C) HEALTHY FUTURES CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

(i) access to health services among economically disadvantaged individuals and individuals who are members of medically underserved populations;

(ii) access to health services for uninsured individuals, including such individuals who are economically disadvantaged children;

(iii) participation, among economically disadvantaged individuals and individuals who are members of medically underserved populations, in disease prevention and health promotion initiatives, particularly those with a focus on addressing common health conditions, addressing chronic diseases, and decreasing health disparities;

(iv) literacy of patients regarding health;

(v) any additional indicator, relating to improving or protecting the health of economically disadvantaged individuals and individuals who are members of medically underserved populations, that the Corporation, in consultation (as appropriate) with the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention, establishes; or

(vi) any additional local indicator (applicable to a particular recipient and on which an improvement in performance is needed) relating to improving or protecting the health of economically disadvantaged individuals and individuals who are members of medically underserved populations, that is approved by the Corporation or a State Commission.

(3) CLEAN ENERGY SERVICE CORPS.—

(A) IN GENERAL.—The recipient may carry out national service projects through a Clean Energy Service Corps that identifies and meets unmet environmental needs within communities through activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

(B) ACTIVITIES.—A Clean Energy Service Corps described in this paragraph may carry out activities such as—

(i) weatherizing and retrofitting housing units for low-income households to significantly improve the energy efficiency and reduce carbon emissions of such housing units;

(ii) building energy-efficient housing units in low-income communities;

(iii) conducting energy audits for low-income households and recommending ways for the households to improve energy efficiency;

(iv) providing clean energy-related services designed to meet the needs of rural communities;

(v) working with schools and youth programs to educate students and youth about ways to reduce home energy use and improve the environment, in-

cluding conducting service-learning projects to provide such education;

(vi) assisting in the development of local recycling programs;

(vii) renewing and rehabilitating national and State parks and forests, city parks, county parks and other public lands, and trails owned or maintained by the Federal Government or a State, including planting trees, carrying out reforestation, carrying out forest health restoration measures, carrying out erosion control measures, fire hazard reduction measures, and rehabilitation and maintenance of historic sites and structures throughout the national park system, and providing trail enhancements, rehabilitation, and repairs;

(viii) cleaning and improving rivers maintained by the Federal Government or a State;

(ix) carrying out projects in partnership with the National Park Service, designed to renew and rehabilitate national park resources and enhance services and learning opportunities for national park visitors, and nearby communities and schools;

(x) providing service through a full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps program that—

(I) undertakes meaningful service projects with visible public benefits, including projects involving urban renewal, sustaining natural resources, or improving human services;

(II) includes as participants youths and young adults who are age 16 through 25, including out-of-school youth and other disadvantaged youth (such as youth who are aging out of foster care, youth who have limited English proficiency, homeless youth, and youth who are individuals with disabilities), who are age 16 through 25; and

(III) provides those participants who are youth and young adults with—

(aa) team-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services including mentoring; and

(bb) the opportunity to develop citizenship values and skills through service to their community and the United States;

(xi) carrying out other activities, addressing unmet environmental and workforce needs, that the Corporation may designate.

(C) CLEAN ENERGY SERVICE CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

(i) the number of housing units of low-income households weatherized or retrofitted to significantly improve energy efficiency and reduce carbon emissions;

(ii) annual energy costs (to determine savings in those costs) at facilities where participants have provided service;

(iii) the number of students and youth receiving education or training in energy-efficient and environmentally conscious practices;

(iv)(I) the number of acres of national parks, State parks, city parks, county parks, or other public lands, that are cleaned or improved; and

(II) the number of acres of forest preserves, or miles of trails or rivers, owned or maintained by the Federal Government or a State, that are cleaned or improved;

(v) any additional indicator relating to clean energy, the reduction of greenhouse gas emissions, or education and skill attainment for clean energy jobs, that the Corporation, in consultation (as appropriate) with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, or the Secretary of Labor, as appropriate, establishes; or

(vi) any additional local indicator (applicable to a particular recipient and on which an improvement in performance is needed) relating to clean energy, the reduction of greenhouse gas emissions, or education or skill attainment for clean energy jobs, that is approved by the Corporation or a State Commission.

(4) VETERANS CORPS.—

(A) IN GENERAL.—The recipient may carry out national service programs through a Veterans Corps that identifies and meets unmet needs of veterans and members of the Armed Forces who are on active duty through activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

(B) ACTIVITIES.—A Veterans Corps described in this paragraph may carry out activities such as—

(i) promoting community-based efforts to meet the unique needs of military families while a family member is deployed and upon that family member's return home;

(ii) recruiting veterans, particularly returning veterans, into service opportunities, including opportunities that utilize their military experience;

(iii) assisting veterans in developing their educational opportunities (including opportunities for professional certification, licensure, or credentials), coordinating activities with and assisting State and local agencies administering veterans education benefits, and coordinating activities with and assisting entities

administering veterans programs with internships and fellowships that could lead to employment in the private and public sectors;

(iv) promoting efforts within a community to serve the needs of veterans and members of the Armed Forces who are on active duty, including helping veterans file benefits claims and assisting Federal agencies in providing services to veterans, and sending care packages to Members of the Armed Forces who are deployed;

(v) assisting veterans in developing mentoring relationships with economically disadvantaged students;

(vi) developing projects to assist veterans with disabilities, veterans who are unemployed, older veterans, and veterans in rural communities, including assisting veterans described in this clause with transportation; or

(vii) other activities, addressing unmet needs of veterans, that the Corporation may designate.

(C) VETERANS' CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

(i) the number of housing units created for veterans;

(ii) the number of veterans who pursue educational opportunities;

(iii) the number of veterans receiving professional certification, licensure, or credentials;

(iv) the number of veterans engaged in service opportunities;

(v) the number of military families assisted by organizations while a family member is deployed and upon that family member's return home;

(vi) the number of economically disadvantaged students engaged in mentoring relationships with veterans;

(vii) the number of projects designed to meet identifiable public needs of veterans, especially veterans with disabilities, veterans who are unemployed, older veterans, and veterans in rural communities;

(viii) any additional indicator that relates to education or skill attainment that assists in providing veterans with the skills to address identifiable public needs, or that relates to improving the lives of veterans, of members of the Armed Forces on active duty, and of families of the veterans and the members on active duty, and that the Corporation, in consultation (as appropriate) with the Secretary of Veterans Affairs, establishes; or

(ix) any additional local indicator (applicable to a particular recipient and on which an improvement in performance is needed) relating to the education or skill attainment, or the improvement, described in clause (viii), that is approved by the Corporation or a State Commission.

(5) OPPORTUNITY CORPS.—

(A) IN GENERAL.—The recipient may carry out national service programs through an Opportunity Corps that identifies and meets unmet needs relating to economic opportunity for economically disadvantaged individuals within communities, through activities such as those described in subparagraph (B) and improves performance on the indicators described in subparagraph (C).

(B) ACTIVITIES.—An Opportunity Corps described in this paragraph may carry out activities such as—

(i) providing financial literacy education to economically disadvantaged individuals, including financial literacy education with regard to credit management, financial institutions including banks and credit unions, and utilization of savings plans;

(ii) assisting in the construction, rehabilitation, or preservation of housing units, including energy efficient homes, for economically disadvantaged individuals;

(iii) assisting economically disadvantaged individuals, including homeless individuals, in finding placement in and maintaining housing;

(iv) assisting economically disadvantaged individuals in obtaining access to health services for themselves or their children;

(v) assisting individuals in obtaining information about Federal, State, local, or private programs or benefits focused on assisting economically disadvantaged individuals, economically disadvantaged children, or low-income families;

(vi) facilitating enrollment in and completion of job training for economically disadvantaged individuals;

(vii) assisting economically disadvantaged individuals in obtaining access to job placement assistance;

(viii) carrying out a program that seeks to eliminate hunger in low-income communities and rural areas through service in projects—

(I) involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(II) seeking to address the long-term causes of hunger through education and the delivery of appropriate services;

(III) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas; or

(IV) assisting individuals in obtaining information about federally supported nutrition programs;

(ix) addressing issues faced by homebound citizens, such as needs for food deliveries, legal and medical services, nutrition information, and transportation;

(x) implementing an E–Corps program that involves participants who provide services in a community by developing and assisting in carrying out technology programs that seek to increase access to technology and the benefits of technology in such community; and

(xi) carrying out other activities, addressing unmet needs relating to economic opportunity for economically disadvantaged individuals, that the Corporation may designate.

(C) OPPORTUNITY CORPS INDICATORS.—The indicators for a corps program described in this paragraph are—

(i) the degree of financial literacy among economically disadvantaged individuals;

(ii) the number of housing units built or improved for economically disadvantaged individuals or low-income families;

(iii) the number of economically disadvantaged individuals with access to job training and other skill enhancement;

(iv) the number of economically disadvantaged individuals with access to information about job placement services;

(v) any additional indicator relating to improving economic opportunity for economically disadvantaged individuals that the Corporation, in consultation (as appropriate) with the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Treasury, establishes; or

(vi) any additional local indicator (applicable to a particular recipient and on which an improvement in performance is needed) that is approved by the Corporation or a State Commission.

(b) NATIONAL SERVICE PROGRAMS.—

(1) IN GENERAL.—The recipient of a grant under section 121(a) and a Federal agency operating or supporting a national service program under section 121(b) may use the financial assistance or positions involved, directly or through subgrants to other entities, to carry out national service programs and model programs under this subsection that are focused on meeting community needs and improve performance on the indicators described in paragraph (3).

(2) PROGRAMS.—The programs may include the following types of national service programs:

(A) 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, including addressing rural poverty, or the need for health services, education, or job training.

(B) A program—

(i) that engages participants in public health, emergency and disaster preparedness, and other public safety activities;

(ii) that may include the recruitment of qualified participants for, and placement of the participants in, positions to be trainees as law enforcement officers, firefighters, search and rescue personnel, and emergency medical service workers; and

(iii) that may engage Federal, State, and local stakeholders, in collaboration, to organize more effective responses to issues of public health, emergencies and disasters, and other public safety issues.

(C) A program that seeks to expand the number of mentors for disadvantaged youths and other youths (including by recruiting high school-, and college-age individuals to enter into mentoring relationships), either through—

(i) provision of direct mentoring services;

(ii) provision of supportive services to direct mentoring service organizations (in the case of a partnership);

(iii) the creative utilization of current and emerging technologies to connect youth with mentors; or

(iv) supporting mentoring partnerships (including statewide and local mentoring partnerships that strengthen direct service mentoring programs) by—

(I) increasing State resources dedicated to mentoring;

(II) supporting the creation of statewide and local mentoring partnerships and programs of national scope through collaborative efforts between entities such as local or direct service mentoring partnerships, or units of State or local government; and

(III) assisting direct service mentoring programs.

(D) A program—

(i) in which not less than 75 percent of the participants are disadvantaged youth;

(ii) that may provide life skills training, employment training, educational counseling, assistance to complete a secondary school diploma or its recognized equivalent, counseling, or a mentoring relationship with an adult volunteer; and

(iii) for which, in awarding financial assistance and approved national service positions, the Corporation shall give priority to programs that engage retirees to serve as mentors.

(E) A program—

(i) that reengages court-involved youth and adults with the goal of reducing recidivism;

(ii) that may create support systems beginning in correctional facilities; and

(iii) that may have life skills training, employment training, an education program (including a program to complete a secondary school diploma or its recog-

nized equivalent), educational and career counseling, and postprogram placement services.

(F) A demonstration program—

(i) that has as 1 of its primary purposes the recruitment and acceptance of court-involved youth and adults as participants, volunteers, or members; and

(ii) that may serve any purpose otherwise permitted under this Act.

(G) A program that provides education or job training services that are designed to meet the needs of rural communities.

(H) A program that seeks to expand the number of mentors for youth in foster care through—

(i) the provision of direct academic mentoring services for youth in foster care;

(ii) the provision of supportive services to mentoring service organizations that directly provide mentoring to youth in foster care, including providing training of mentors in child development, domestic violence, foster care, confidentiality requirements, and other matters related to working with youth in foster care; or

(iii) supporting foster care mentoring partnerships, including statewide and local mentoring partnerships that strengthen direct service mentoring programs.

(I) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

(3) INDICATORS.—The indicators for a program described in this subsection are the indicators described in subparagraph (C) of paragraphs (1), (2), (3), (4), or (5) of subsection (a) or any additional local indicator (applicable to a participant or recipient and on which an improvement in performance is needed) relating to meeting unmet community needs, that is approved by the Corporation or a State Commission.

(c) PROGRAM MODELS FOR SERVICE CORPS.—

(1) IN GENERAL.—In addition to any activities described in subparagraph (B) of paragraphs (1) through (5) of subsection (a), and subsection (b)(2), a recipient of a grant under section 121(a) and a Federal agency operating or supporting a national service program under section 121(b) may directly or through grants or subgrants to other entities carry out a national service corps program through the following program models:

(A) A community corps program that meets unmet health, veteran, and other human, educational, environmental, or public safety 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.

(B) A service program that—

(i) recruits individuals with special skills or provides specialized preservice training to enable partici-

pants to be placed individually or in teams in positions in which the participants can meet such unmet 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.

(C) 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—

(i) 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.);

(ii) teams composed of students described in clause (i); or

(iii) teams composed of a combination of such students and community residents.

(D) 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 human, educational, environmental, or public safety needs in communities with an inadequate number of such professionals;

(ii) for which the salary may exceed the maximum living allowance authorized in subsection (a)(2) of section 140, as provided in subsection (c) of such section; and

(iii) that are sponsored by public or private employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under subtitle D) of the participants.

(E) A program that provides opportunities for veterans to participate in service projects.

(F) A program carried out by an intermediary that builds the capacity of local nonprofit and faith-based organizations to expand and enhance services to meet local or national needs.

(G) Such other program models as may be approved by the Corporation or a State Commission, as appropriate.

(2) PROGRAM MODELS WITHIN CORPS.—A recipient of financial assistance or approved national service positions for a corps program described in subsection (a) may use the assistance or positions to carry out the corps program, in whole or in part, using a program model described in this subsection. The corps program shall meet the applicable requirements of subsection (a) and this subsection.

(d) QUALIFICATION CRITERIA TO DETERMINE ELIGIBILITY.—

(1) ESTABLISHMENT BY CORPORATION.—The Corporation shall establish qualification criteria for different types of national service programs for the purpose of determining whether a particular national service program should be considered to be a national service program eligible to receive assistance or approved national service positions under this subtitle.

(2) CONSULTATION.—In establishing qualification criteria under paragraph (1), the Corporation shall consult with organizations and individuals with extensive experience in developing and administering effective national service programs or regarding the delivery of veteran services, and other human, educational, environmental, or public safety services, to communities or persons.

(3) APPLICATION TO SUBGRANTS.—The qualification criteria established by the Corporation under paragraph (1) shall also be used by each recipient of assistance under section 121(a) that uses any portion of the assistance to conduct a grant program to support other national service programs.

(4) ENCOURAGEMENT OF INTERGENERATIONAL COMPONENTS OF PROGRAMS.—The Corporation shall encourage national service programs eligible to receive assistance or approved national service positions under this subtitle to establish, if consistent with the purposes of the program, an intergenerational component of the program that combines students, out-of-school youths, disadvantaged youth, and older adults as participants to provide services to address unmet human, educational, environmental, or public safety needs.

(e) PRIORITIES FOR CERTAIN CORPS.—In awarding financial assistance and approved national service positions to eligible entities proposed to carry out the corps described in subsection (a)—

(1) in the case of a corps described in subsection (a)(2)—

(A) the Corporation may give priority to eligible entities that propose to provide support for participants who, after completing service under this section, will undertake careers to improve performance on health indicators described in subsection (a)(2)(C); and

(B) the Corporation shall give priority to eligible entities that propose to carry out national service programs in medically underserved areas (as designated individually, by the Secretary of Health and Human Services as an area with a shortage of personal health services); and

(2) in the case of a corps described in subsection (a)(3), the Corporation shall give priority to eligible entities that propose to recruit individuals for the Clean Energy Service Corps so that significant percentages of participants in the Corps are economically disadvantaged individuals, and provide to such individuals support services and education and training to develop skills needed for clean energy jobs for which there is current demand or projected future demand.

(f) NATIONAL SERVICE PRIORITIES.—

(1) ESTABLISHMENT.—

(A) BY CORPORATION.—In order to concentrate national efforts on meeting human, educational, environmental, or public safety needs and to achieve the other purposes of

this Act, the Corporation, after reviewing the strategic plan approved under section 192A(g)(1,) shall establish, and may periodically alter, priorities regarding the types of national service programs and corps to be assisted under section 129 and the purposes for which such assistance may be used.

(B) BY STATES.—Consistent with paragraph (4), States shall establish, and through the national service plan process described in section 178(e)(1), periodically alter priorities as appropriate regarding the national service programs to be assisted under section 129(e). The State priorities shall be subject to Corporation review as part of the application process under section 130.

(2) NOTICE TO APPLICANTS.—The Corporation shall provide advance notice to potential applicants of any national service priorities to be in effect under this subsection for a fiscal year. The notice shall specifically include—

(A) a description of any alteration made in the priorities since the previous notice; and

(B) a description of the national service programs that are designated by the Corporation under section 133(d)(2) as eligible for priority consideration in the next competitive distribution of assistance under section 121(a).

(3) REGULATIONS.—The Corporation shall by regulation establish procedures to ensure the equitable treatment of national service programs that—

(A) receive funding under this subtitle for multiple years; and

(B) would be adversely affected by annual revisions in such national service priorities.

(4) APPLICATION TO SUBGRANTS.—Any national service priorities established by the Corporation under this subsection shall also be used by each recipient of funds under section 121(a) that uses any portion of the assistance to conduct a grant program to support other national service programs.

(g) CONSULTATION ON INDICATORS.—The Corporation shall consult with the Secretary of Education, the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, the Secretary of Energy, the Secretary of Veterans Affairs, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Treasury, as appropriate, in developing additional indicators for the corps and programs described in subsections (a) and (b).

(h) REQUIREMENTS FOR TUTORS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Corporation shall require that each recipient of assistance under the national service laws that operates a tutoring program involving elementary school or secondary school students certifies that individuals serving in approved national service positions as tutors in such program have—

(A) obtained their high school diplomas; and

(B) successfully completed pre- and in-service training for tutors.

(2) EXCEPTION.—The requirements in paragraph (1) do not apply to an individual serving in an approved national service position who is enrolled in an elementary school or secondary school and is providing tutoring services through a structured, school-managed cross-grade tutoring program.

(i) REQUIREMENTS FOR TUTORING PROGRAMS.—Each tutoring program that receives assistance under the national service laws shall—

(1) offer a curriculum that is high quality, research-based, and consistent with the State academic content standards required by section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311) and the instructional program of the local educational agency; and

(2) offer high quality, research-based pre- and in-service training for tutors.

(j) CITIZENSHIP TRAINING.—The Corporation shall establish guidelines for recipients of assistance under the national service laws, that are consistent with the principles on which citizenship programs administered by U.S. Citizenship and Immigration Services are based, relating to the promotion of citizenship and civic engagement among participants in approved national service positions and approved summer of service positions, and appropriate to the age, education, and experience of the participants.

(k) REPORT.—Not later than 60 days after the end of each fiscal year for which the Corporation makes grants under section 121(a), the Corporation shall prepare and submit to the authorizing committees a report containing—

(1) information describing how the Corporation allocated financial assistance and approved national service positions among eligible entities proposed to carry out corps and national service programs described in this section for that fiscal year;

(2) information describing the amount of financial assistance and the number of approved national service positions the Corporation provided to each corps and national service program described in this section for that fiscal year;

(3) a measure of the extent to which the corps and national service programs improved performance on the corresponding indicators; and

(4) information describing how the Corporation is coordinating—

(A) the national service programs funded under this section; with

(B) applicable programs, as determined by the Corporation, carried out under subtitle B of this title, and part A of title I and parts A and B of title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq., 5001, 5011) that improve performance on those indicators or otherwise address identified community needs.

SEC. 123. [42 U.S.C. 12573] TYPES OF NATIONAL SERVICE POSITIONS ELIGIBLE FOR APPROVAL FOR NATIONAL SERVICE EDUCATIONAL AWARDS.

The Corporation may approve of any of the following service positions as an approved national service position that includes the

national service educational award described in subtitle D as one of the benefits to be provided for successful service in the position:

(1) A position for a participant in a national service program described in subsection (a), (b), or (c) of section 122 that receives assistance under subsection (a) of section 121.

(2) A position for a participant in a program that—

(A) is carried out by a State, a subdivision of a State, a territory, an Indian tribe, a public or private nonprofit organization, an institution of higher education, or a Federal agency (under an interagency agreement described in section 121(b)); and

(B) would be eligible to receive assistance under section 121(a), based on criteria established by the Corporation, but has not applied for such assistance.

(3) A position involving service as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.).

(4) A position facilitating service-learning in a program described in section 122(a)(1)(B)(vi) that is eligible for assistance under part I of subtitle B.

(5) A position for a participant in the National Civilian Community Corps under subtitle E.

(6) A position involving service as a crew leader in a youth corps program or a similar position supporting a national service program that receives an approved national service position.

(7) A position involving service in the ServeAmerica Fellowship program carried out under section 198B.

(8) Such other national service positions as the Corporation considers to be appropriate.

SEC. 124. [42 U.S.C. 12574] TYPES OF PROGRAM ASSISTANCE.

(a) PLANNING ASSISTANCE.—The Corporation may provide assistance under section 121 to a qualified applicant that submits an application under section 130 for the planning of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 1 year.

(b) OPERATIONAL ASSISTANCE.—The Corporation may provide assistance under section 121 to a qualified applicant that submits an application under section 130 for the establishment, operation, or expansion of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 130.

(c) REPLICATION ASSISTANCE.—The Corporation may provide assistance under section 121 to a qualified applicant that submits an application under section 130 for the expansion of a proven national service program to another geographical location. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 130.

(d) APPLICATION TO SUBGRANTS.—The requirements of this section shall apply to any State or other applicant receiving assistance

under section 121 that proposes to conduct a grant program using the assistance to support other national service programs.

SEC. 126. [42 U.S.C. 12576] OTHER SPECIAL ASSISTANCE.

(a) SUPPORT FOR STATE COMMISSIONS.—

(1) GRANTS AUTHORIZED.—From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 501(a)(5), the Corporation may make a grant in an amount between $250,000 and $1,000,000 to a State to assist the State to establish or operate the State Commission on National and Community Service required to be established by the State under section 178.

(2) MATCHING REQUIREMENT.—In making a grant to a State under this subsection, the Corporation shall require the State to agree to provide matching funds from non-Federal sources of not less than $1 for every $1 provided by the Corporation through the grant.

(3) ALTERNATIVE.—Notwithstanding paragraph (2), the Chief Executive Officer may permit a State that demonstrates hardship or a new State Commission to meet alternative matching requirements for such a grant as follows:

(A) FIRST $100,000.—For the first $100,000 of grant funds provided by the Corporation, the State involved shall not be required to provide matching funds.

(B) AMOUNTS GREATER THAN $100,000.—For grant amounts of more than $100,000 and not more than $250,000 provided by the Corporation, the State shall agree to provide matching funds from non-Federal sources of not less than $1 for every $2 provided by the Corporation, in excess of $100,000.

(C) AMOUNTS GREATER THAN $250,000.—For grant amounts of more than $250,000 provided by the Corporation, the State shall agree to provide matching funds from non-Federal sources of not less than $1 for every $1 provided by the Corporation, in excess of $250,000.

(b) DISASTER SERVICE.—The Corporation may undertake activities, including activities carried out through part A of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), to involve programs that receive assistance under the national service laws in disaster relief efforts, and to support, including through mission assignments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), nonprofit organizations and public agencies responding to the needs of communities experiencing disasters.

(c) CHALLENGE GRANTS FOR NATIONAL SERVICE PROGRAMS.—

(1) ASSISTANCE AUTHORIZED.—The Corporation may make challenge grants under this subsection to programs supported under the national service laws.

(2) SELECTION CRITERIA.—The Corporation shall develop criteria for the selection of recipients of challenge grants under this subsection, so as to make the grants widely available to a variety of programs that—

(A) are high-quality national service programs; and

(B) are carried out by entities with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) AMOUNT OF ASSISTANCE.—A challenge grant under this subsection may provide, for an initial 3-year grant period, not more than $1 of assistance under this subsection for each $1 in cash raised from private sources by the program supported under the national service laws in excess of amounts required to be provided by the program to satisfy matching funds requirements. After an initial 3-year grant period, a grant under this subsection may provide not more than $1 of assistance under this subsection for each $2 in cash raised from private sources by the program in excess of amounts required to be provided by the program to satisfy matching funds requirements. The Corporation may permit the use of local or State funds under this paragraph in lieu of cash raised from private sources if the Corporation determines that such use would be equitable due to a lack of available private funds at the local level. The Corporation shall establish a ceiling on the amount of assistance that may be provided to a national service program under this subsection.

PART II—APPLICATION AND APPROVAL PROCESS

SEC. 129. [42 U.S.C. 12581] PROVISION OF ASSISTANCE AND APPROVED NATIONAL SERVICE POSITIONS.

(a) ONE PERCENT ALLOTMENT FOR CERTAIN TERRITORIES.—Of the funds allocated by the Corporation for provision of assistance under section 121(a) for a fiscal year, the Corporation shall reserve 1 percent for grants to the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands upon approval by the Corporation of an application submitted under section 130. The Corporation shall allot for a grant to each such territory under this subsection for a fiscal year an amount that bears the same ratio to 1 percent of the allocated funds for that fiscal year as the population of the territory bears to the total population of all such territories.

(b) ALLOTMENT FOR INDIAN TRIBES.—Of the funds allocated by the Corporation for provision of assistance under section 121(a) for a fiscal year, the Corporation shall reserve at least 1 percent for grants to Indian tribes to be allotted by the Corporation on a competitive basis.

(c) RESERVATION OF APPROVED POSITIONS.—The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or as a participant in the National Civilian Community Corps Program under subtitle E shall receive the national service educational award described in subtitle D if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service posi-

tions to be available for distribution under subsections (d) and (e) for that fiscal year.

(d) ALLOTMENT FOR COMPETITIVE GRANTS.—

(1) IN GENERAL.—Of the funds allocated by the Corporation for provision of assistance under section 121(a) for a fiscal year and subject to section 133(d)(3), the Corporation shall reserve not more than 62.7 percent for grants awarded on a competitive basis to States specified in subsection (e)(1) for national service programs, to nonprofit organizations seeking to operate a national service program in 2 or more of those States, and to Indian tribes.

(2) EQUITABLE TREATMENT.—In the consideration of applications for such grants, the Corporation shall ensure the equitable treatment of applicants from urban areas, applicants from rural areas, applicants of diverse sizes (as measured by the number of participants served), applicants from States, and applicants from national nonprofit organizations.

(3) ENCORE SERVICE PROGRAMS.—In making grants under this subsection for a fiscal year, the Corporation shall make an effort to allocate not less than 10 percent of the financial assistance and approved national service positions provided through the grants for that fiscal year to eligible entities proposing to carry out encore service programs, unless the Corporation does not receive a sufficient number of applications of adequate quality to justify making that percentage available to those eligible entities.

(4) CORPS PROGRAMS.—In making grants under this subsection for a fiscal year, the Corporation—

(A) shall select 2 or more of the national service corps described in section 122(a) to receive grants under this subsection; and

(B) may select national service programs described in section 122(b) to receive such grants.

(e) ALLOTMENT TO CERTAIN STATES ON FORMULA BASIS.—

(1) GRANTS.—Of the funds allocated by the Corporation for provision of assistance under section 121(a) for a fiscal year, the Corporation shall make a grant to each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico that submits an application under section 130 that is approved by the Corporation.

(2) ALLOTMENTS.—The Corporation shall allot for a grant to each such State under this subsection for a fiscal year an amount that bears the same ratio to 35.3 percent of the allocated funds for that fiscal year as the population of the State bears to the total population of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, in compliance with paragraph (3).

(3) MINIMUM AMOUNT.—Notwithstanding paragraph (2), the minimum grant made available to each State approved by the Corporation under paragraph (1) for each fiscal year shall be at least $600,000, or 0.5 percent of the amount allocated for the State formula under this subsection for the fiscal year, whichever is greater.

(f) EFFECT OF FAILURE TO APPLY.—If a State or territory fails to apply for, or fails to give notice to the Corporation of its intent to apply for, an allotment under this section, or the Corporation does not approve the application consistent with section 133, the Corporation may use the amount that would have been allotted under this section to the State or territory to—

(1) make grants (and provide approved national service positions in connection with such grants) to other community-based entities under section 121 that propose to carry out national service programs in such State or territory; and

(2) make reallotments to other States or territories with approved applications submitted under section 130, from the allotment funds not used to make grants as described in paragraph (1).

(g) APPLICATION REQUIRED.—The Corporation shall make an allotment of assistance (including the provision of approved national service positions) to a recipient under this section only pursuant to an application submitted by a State or other applicant under section 130.

(h) APPROVAL OF POSITIONS SUBJECT TO AVAILABLE FUNDS.—The Corporation may not approve positions as approved national service positions under this subtitle 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, taking into consideration funding needs for national service educational awards under subtitle D based on completed service. If appropriations are insufficient to provide the maximum allowable national service educational awards under subtitle D for all eligible participants, the Corporation is authorized to make necessary and reasonable adjustments to program rules.

(i) SPONSORSHIP OF APPROVED NATIONAL SERVICE POSITIONS.—

(1) SPONSORSHIP AUTHORIZED.—The Corporation may enter into agreements with persons or entities who offer to sponsor national service positions for which the person or entity will be responsible for supplying the funds necessary to provide a national service educational award. The distribution of those approved national service positions shall be made pursuant to the agreement, and the creation of those positions shall not be taken into consideration in determining the number of approved national service positions to be available for distribution under this section.

(2) DEPOSIT OF CONTRIBUTION.—Funds provided pursuant to an agreement under paragraph (1) shall be deposited in the National Service Trust established in section 145 until such time as the funds are needed.

(j) RESERVATION OF FUNDS FOR SPECIAL ASSISTANCE.—

(1) RESERVATION.—From amounts appropriated for a fiscal year pursuant to the authorization of appropriations in section 501(a)(2) and allocated to carry out subtitle C and subject to the limitation in such section, the Corporation may reserve such amount as the Corporation considers to be appropriate for the purpose of making assistance available under subsections (b) and (c) of section 126.

(2) LIMITATION.—The amount reserved under paragraph (1) for a fiscal year may not exceed $10,000,000.

(3) TIMING.—The Corporation shall reserve such amount, and any amount reserved under subsection (k) from funds appropriated and allocated to carry out subtitle C, before allocating funds for the provision of assistance under any other provision of this subtitle.

(k) RESERVATION OF FUNDS TO INCREASE THE PARTICIPATION OF INDIVIDUALS WITH DISABILITIES.—

(1) RESERVATION.—To make grants to public or private nonprofit organizations to increase the participation of individuals with disabilities in national service and for demonstration activities in furtherance of this purpose, and subject to the limitation in paragraph (2), the Chief Executive Officer shall reserve not less than 2 percent from the amounts, appropriated to carry out subtitles C, D, E, and H for each fiscal year.

(2) LIMITATION.—The amount reserved under paragraph (1) for a fiscal year may not exceed $20,000,000.

(3) REMAINDER.—The Chief Executive Officer may use the funds reserved under paragraph (1), and not distributed to make grants under this subsection for other activities described in section 501(a)(2).

(l) AUTHORITY FOR FIXED-AMOUNT GRANTS.—

(1) IN GENERAL.—

(A) AUTHORITY.—From amounts appropriated for a fiscal year to provide financial assistance under the national service laws, the Corporation may provide assistance in the form of fixed-amount grants in an amount determined by the Corporation under paragraph (2) rather than on the basis of actual costs incurred by a program.

(B) LIMITATION.—Other than fixed-amount grants to support programs described in section 129A, for the 1-year period beginning on the effective date of the Serve America Act, the Corporation may provide assistance in the form of fixed-amount grants to programs that only offer full-time positions.

(2) DETERMINATION OF AMOUNT OF FIXED-AMOUNT GRANTS.—A fixed-amount grant authorized by this subsection shall be in an amount determined by the Corporation that is—

(A) significantly less than the reasonable and necessary costs of administering the program supported by the grant; and

(B) based on an amount per individual enrolled in the program receiving the grant, taking into account—

(i) the capacity of the entity carrying out the program to manage funds and achieve programmatic results;

(ii) the number of approved national service positions, approved silver scholar positions, or approved summer of service positions for the program, if applicable;

(iii) the proposed design of the program;

(iv) whether the program provides service to, or involves the participation of, disadvantaged youth or

otherwise would reasonably incur a relatively higher level of costs; and

(v) such other factors as the Corporation may consider under section 133 in considering applications for assistance.

(3) REQUIREMENTS FOR GRANT RECIPIENTS.—In awarding a fixed-amount grant under this subsection, the Corporation—

(A) shall require the grant recipient—

(i) to return a pro rata amount of the grant funds based upon the difference between the number of hours served by a participant and the minimum number of hours for completion of a term of service (as established by the Corporation);

(ii) to report on the program's performance on standardized measures and performance levels established by the Corporation;

(iii) to cooperate with any evaluation activities undertaken by the Corporation; and

(iv) to provide assurances that additional funds will be raised in support of the program, in addition to those received under the national service laws; and

(B) may adopt other terms and conditions that the Corporation considers necessary or appropriate based on the relative risks (as determined by the Corporation) associated with any application for a fixed-amount grant.

(4) OTHER REQUIREMENTS NOT APPLICABLE.—Limitations on administrative costs and matching fund documentation requirements shall not apply to fixed-amount grants provided in accordance with this subsection.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall relieve a grant recipient of the responsibility to comply with the requirements of chapter 75 of title 31, United States Code, or other requirements of Office of Management and Budget Circular A–133.

SEC. 129A. [42 U.S.C. 12581a] EDUCATIONAL AWARDS ONLY PROGRAM.

(a) IN GENERAL.—From amounts appropriated for a fiscal year to provide financial assistance under this subtitle and consistent with the restriction in subsection (b), the Corporation may, through fixed-amount grants (in accordance with section 129(l)), provide operational support to programs that receive approved national service positions but do not receive funds under section 121(a).

(b) LIMIT ON CORPORATION GRANT FUNDS.—The Corporation may provide the operational support under this section for a program in an amount that is not more than $800 per individual enrolled in an approved national service position, or not more than $1,000 per such individual if at least 50 percent of the persons enrolled in the program are disadvantaged youth.

(c) INAPPLICABLE PROVISIONS.—The following provisions shall not apply to programs funded under this section:

(1) The limitation on administrative costs under section 121(d).

(2) The matching funds requirements under section 121(e).

(3) The living allowance and other benefits under sections 131(e) and 140 (other than individualized support services for participants with disabilities under section 140(f)).

SEC. 130. [42 U.S.C. 12582] APPLICATION FOR ASSISTANCE AND APPROVED NATIONAL SERVICE POSITIONS

(a) TIME, MANNER, AND CONTENT OF APPLICATION.—To be eligible to receive assistance under section 121(a) or approved national service positions for participants who serve in the national service programs to be carried out using the assistance, a State, territory, subdivision of a State, Indian tribe, public or private nonprofit organization, or institution of higher education shall prepare and submit to the Corporation an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) TYPES OF PERMISSIBLE APPLICATION INFORMATION.—In order to have adequate information upon which to consider an application under section 133, the Corporation may require the following information to be provided in an application submitted under subsection (a):

(1) A description of the national service programs proposed to be carried out directly by the applicant using assistance provided under section 121.

(2) A description of the national service programs that are selected by the applicant to receive a grant using assistance requested under section 121 and a description of the process and criteria by which the programs were selected.

(3) A description of other funding sources to be used, or sought to be used, for the national service programs referred to in paragraphs (1) and (2), and, if the application is submitted for the purpose of seeking a renewal of assistance, a description of the success of the programs in reducing their reliance on Federal funds.

(4) A description of the extent to which the projects to be conducted using the assistance will address unmet human, educational, environmental, or public safety needs and produce a direct benefit for the community in which the projects are performed.

(5) A description of the plan to be used to recruit participants, including youth who are individuals with disabilities and economically disadvantaged young men and women, for the national service programs referred to in paragraphs (1) and (2).

(6) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) build on existing programs, including Federal programs.

(7) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) will involve participants—

(A) in projects that build an ethic of civic responsibility and produce a positive change in the lives of participants through training and participation in meaningful service experiences and opportunities for reflection on such experiences; and

(B) in leadership positions in implementing and evaluating the program.

(8) Measurable goals for the national service programs referred to in paragraphs (1) and (2), and a strategy to achieve such goals, in terms of—

(A) the impact to be made in meeting unmet human, educational, environmental, or public safety needs; and

(B) the service experience to be provided to participants in the programs.

(9) A description of the manner and extent to which the national service programs referred to in paragraphs (1) and (2) conform to the national service priorities established by the Corporation under section 122(f).

(10) A description of the past experience of the applicant in operating a comparable program or in conducting a grant program in support of other comparable service programs.

(11) A description of the type and number of proposed service positions in which participants will receive the national service educational award described in subtitle D and a description of the manner in which approved national service positions will be apportioned by the applicant.

(12) A description of the manner and extent to which participants, representatives of the community served, community-based agencies with a demonstrated record of experience in providing services, municipalities and governments of counties in which such a community is located, and labor organizations contributed to the development of the national service programs referred to in paragraphs (1) and (2), including the identity of the individual representing each appropriate labor organization (if any) who was consulted and the nature of the consultation.

(13) Such other information as the Corporation may reasonably require.

(c) REQUIRED APPLICATION INFORMATION.—An application submitted under subsection (a) shall contain the following information:

(1) A description of the proposed positions into which participants will be placed using the assistance provided under section 121.

(2) A description of the proposed minimum qualifications that individuals shall meet to become participants in such programs.

(3) In the case of a nonprofit organization intending to operate programs in 2 or more States, a description of the manner in which and extent to which the organization consulted with the State Commissions of each State in which the organization intends to operate and the nature of the consultation.

(d) ADDITIONAL REQUIRED APPLICATION INFORMATION.—An application submitted under subsection (a) for programs described in 122(a) shall also contain—

(1) measurable goals, to be used for annual measurements of the program's performance on 1 or more of the corresponding indicators described in section 122;

(2) information describing how the applicant proposes to utilize funds to improve performance on the corresponding in-

dicators utilizing participants, including describing the activities in which such participants will engage to improve performance on those indicators;

(3) information identifying the geographical area in which the eligible entity proposing to carry out the program proposes to use funds to improve performance on the corresponding indicators, and demographic information on the students or individuals, as appropriate, in such area, and statistics demonstrating the need to improve such indicators in such area; and

(4) if applicable, information on how the eligible entity will work with other community-based entities to carry out activities to improve performance on the corresponding indicators using such funds.

(e) APPLICATION TO RECEIVE ONLY APPROVED NATIONAL SERVICE POSITIONS.—

(1) APPLICABILITY OF SUBSECTION.—This subsection shall apply in the case of an application in which—

(A) the applicant is not seeking assistance under section 121(a), but requests national service educational awards for individuals serving in service positions described in section 123; or

(B) the applicant requests national service educational awards for service positions described in section 123, but the positions are not positions in a national service program described in subsection (a), (b), or (c) of section 122 for which assistance may be provided under section 121(a).

(2) SPECIAL APPLICATION REQUIREMENTS.—For the applications described in paragraph (1), the Corporation shall establish special application requirements in order to determine—

(A) whether the service positions meet unmet human, educational, environmental, or public safety needs and meet the criteria for assistance under this subtitle; and

(B) whether the Corporation should approve the positions as approved national service positions.

(f) SPECIAL RULE FOR STATE APPLICANTS.—

(1) SUBMISSION BY STATE COMMISSION.—The application of a State for approved national service positions or for a grant under section 121(a) shall be submitted by the State Commission.

(2) COMPETITIVE SELECTION.—The application of a State shall contain an assurance that all assistance provided under section 121(a) to the State will be used to support national service programs that were or will be selected by the State on a competitive basis. In making such competitive selections, the State shall seek to ensure the equitable allocation within the State of assistance and approved national service positions provided under this subtitle to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress.

(3) ASSISTANCE TO NONSTATE ENTITIES.—The application of a State shall also contain an assurance that not less than 60 percent of the assistance will be used to make grants in support of national service programs other than national service

programs carried out by a State agency. The Corporation may permit a State to deviate from the percentage specified by this subsection if the State has not received a sufficient number of acceptable applications to comply with the percentage.

(g) SPECIAL RULE FOR CERTAIN APPLICANTS.—

(1) WRITTEN CONCURRENCE.—In the case of an applicant that proposes to also serve as the service sponsor, the application shall include the written concurrence of any local labor organization representing employees of the service sponsor who are engaged in the same or substantially similar work as that proposed to be carried out.

(2) APPLICANT DEFINED.—For purposes of this subsection, the term "applicant" means—

(A) a State, subdivision of a State, territory, Indian tribe, public or private nonprofit organization, or institution of higher education submitting an application under this section; or

(B) an entity applying for assistance or approved national service positions through a grant program conducted using assistance provided to a State, subdivision of a State, territory, Indian tribe, public or private nonprofit organization, or institution of higher education under section 121.

(h) LIMITATION ON SAME PROJECT RECEIVING MULTIPLE GRANTS.—Unless specifically authorized by law, the Corporation may not provide more than 1 grant under the national service laws for a fiscal year to support the same project under the national service laws.

SEC. 131. [42 U.S.C. 12583] NATIONAL SERVICE PROGRAM ASSISTANCE REQUIREMENTS.

(a) IMPACT ON COMMUNITIES.—An application submitted under section 130 shall include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 121 and any national service program supported by a grant made by the applicant using such assistance will—

(1) address unmet human, educational, environmental, or public safety needs through services that provide a direct benefit to the community in which the service is performed; and

(2) comply with the nonduplication and nondisplacement requirements of section 177 and the grievance procedure requirements of section 176(f).

(b) IMPACT ON PARTICIPANTS.—An application submitted under section 130 shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 121 and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide participants in the national service program with the training, skills, and knowledge necessary for the projects that participants are called upon to perform;

(2) provide support services to participants, such as the provision of appropriate information and support—

(A) to those participants who are completing a term of service and making the transition to other educational and career opportunities; and

(B) to those participants who are school dropouts in order to assist those participants in earning the equivalent of a high school diploma; and

(3) provide, if appropriate, structured opportunities for participants to reflect on their service experiences.

(c) CONSULTATION.—An application submitted under section 130 shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 121 and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide in the design, recruitment, and operation of the program for broad-based input from—

(A) the community served, the municipality and government of the county (if appropriate) in which the community is located, and potential participants in the program; and

(B) community-based agencies with a demonstrated record of experience in providing services and local labor organizations representing employees of service sponsors, if these entities exist in the area to be served by the program;

(2) prior to the placement of participants, 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 such program to ensure compliance with the nondisplacement requirements specified in section 177; and

(3) in the case of a program that is not funded through a State (including a national service program that a nonprofit organization seeks to operate in 2 or more States), consult with and coordinate activities with the State Commission for each State in which the program will operate, and the Corporation shall obtain confirmation from the State Commission that the applicant seeking assistance under this Act has consulted with and coordinated with the State Commission when seeking to operate the program in that State.

(d) EVALUATION AND PERFORMANCE GOALS.—

(1) IN GENERAL.—An application submitted under section 130 shall also include an assurance by the applicant that the applicant will—

(A) arrange for an independent evaluation of any national service program carried out using assistance provided to the applicant under section 121 or, with the approval of the Corporation, conduct an internal evaluation of the program;

(B) apply measurable performance goals and evaluation methods (such as the use of surveys of participants and persons served), which are to be used as part of such evaluation to determine the impact of the program—

(i) on communities and persons served by the projects performed by the program;

(ii) on participants who take part in the projects; and

(iii) in such other areas as the Corporation may require; and

(C) cooperate with any evaluation activities undertaken by the Corporation.

(2) EVALUATION.—Subject to paragraph (3), the Corporation shall develop evaluation criteria and performance goals applicable to all national service programs carried out with assistance provided under section 121.

(3) ALTERNATIVE EVALUATION REQUIREMENTS.—The Corporation may establish alternative evaluation requirements for national service programs based upon the amount of assistance received under section 121 or received by a grant made by a recipient of assistance under such section. The determination of whether a national service program is covered by this paragraph shall be made in such manner as the Corporation may prescribe.

(e) LIVING ALLOWANCES AND OTHER INSERVICE BENEFITS.—Except as provided in section 140(c), an application submitted under section 130 shall also include an assurance by the applicant that the applicant will—

(1) ensure the provision of a living allowance and other benefits specified in section 140 to participants in any national service program carried out by the applicant using assistance provided under section 121; and

(2) require that each national service program that receives a grant from the applicant using such assistance will also provide a living allowance and other benefits specified in section 140 to participants in the program.

(f) SELECTION OF PARTICIPANTS FROM INDIVIDUALS RECRUITED BY CORPORATION OR STATE COMMISSIONS.—The Corporation may also require an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 121 and any national service program supported by a grant made by the applicant using such assistance will select a portion of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under section 138(d). The Corporation may specify a minimum percentage of participants to be selected from the national leadership pool established under section 138(e) and may vary the percentage for different types of national service programs.

SEC. 132. [42 U.S.C. 12584] INELIGIBLE SERVICE CATEGORIES.

(a) IN GENERAL.—Except as provided in subsection (b), an application submitted to the Corporation under section 130 shall include an assurance by the applicant that any national service program carried out using assistance provided under section 121 and any approved national service position provided to an applicant will not be used to perform service that provides a direct benefit to any—

(1) business organized for profit;

(2) labor union;

(3) partisan political organization;

(4) organization engaged in religious activities, unless such service does not involve the use of assistance provided under section 121 or participants—

(A) to give religious instruction;

(B) to conduct worship services;

(C) to provide instruction as part of a program that includes mandatory religious education or worship;

(D) to construct or operate facilities devoted to religious instruction or worship or to maintain facilities primarily or inherently devoted to religious instruction or worship; or

(E) to engage in any form of proselytization; or

(5) nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)), except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative.

(b) REGIONAL CORPORATION.—The requirement of subsection (a) relating to an assurance regarding direct benefits to businesses organized for profit shall not apply with respect to a Regional Corporation, as defined in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)), that is established in accordance with such Act as a for-profit corporation but that is engaging in nonprofit activities.

SEC. 132A. [42 U.S.C. 12584a] PROHIBITED ACTIVITIES AND INELIGIBLE ORGANIZATIONS.

(a) PROHIBITED ACTIVITIES.—An approved national service position under this subtitle may not be used for 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 Federal office or the outcome of an election to a State or local 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 proselytization, consistent with section 132.

(8) Consistent with section 132, providing a direct benefit to any—

(A) business organized for profit;

(B) labor union;

(C) partisan political organization;

(D) nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986, except that nothing in this paragraph shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

(E) organization engaged in the religious activities described in paragraph (7), unless the position is not used to support those religious activities.

(9) Providing abortion services or referrals for receipt of such services.

(10) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive.

(11) Carrying out such other activities as the Corporation may prohibit.

(b) INELIGIBILITY.—No assistance provided under this subtitle may be provided to any organization that has violated a Federal criminal statute.

(c) NONDISPLACEMENT OF EMPLOYED WORKERS OR OTHER VOLUNTEERS.—A participant in an approved national service position under this subtitle may not be directed to perform any services or duties, or to engage in any activities, prohibited under the nonduplication, nondisplacement, or nonsupplantation requirements relating to employees and volunteers in section 177.

SEC. 133. [42 U.S.C. 12585] CONSIDERATION OF APPLICATIONS.

(a) CORPORATION CONSIDERATION OF CERTAIN CRITERIA.—The Corporation shall apply the criteria described in subsections (c) and (d) in determining whether—

(1) to approve an application submitted under section 130 and provide assistance under section 121 to the applicant; and

(2) to approve service positions described in the application as national service positions that include the national service educational award described in subtitle D and provide such approved national service positions to the applicant.

(b) APPLICATION TO SUBGRANTS.—

(1) IN GENERAL.—A State or other entity that uses assistance provided under section 121(a) to support national service programs selected on a competitive basis to receive a share of the assistance shall use the criteria described in subsections (c) and (d) when considering an application submitted by a national service program to receive a portion of such assistance or an approved national service position.

(2) CONTENTS.—The application of the State or other entity under section 130 shall contain—

(A) a certification that the State or other entity used these criteria in the selection of national service programs to receive assistance;

(B) a description of the positions into which participants will be placed using such assistance, including de-

scriptions of specific tasks to be performed by such participants; and

(C) a description of the minimum qualifications that individuals shall meet to become participants in such programs.

(c) ASSISTANCE CRITERIA.—The criteria required to be applied in evaluating applications submitted under section 130 are as follows:

(1) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(2) The innovative aspects of the national service program, and the feasibility of replicating the program.

(3) The sustainability of the national service program, based on evidence such as the existence—

(A) of strong and broad-based community support for the program; and

(B) of multiple funding sources or private funding for the program.

(4) 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.

(5) 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.

(6) The extent to which projects would be conducted in the following areas where they are needed most:

(A) Communities designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

(B) Areas that are environmentally distressed.

(C) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

(D) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.

(E) Areas that have an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

(7) In the case of applicants other than States, the extent to which the application is consistent with the application under section 130 of the State in which the projects would be conducted.

(8) Such other criteria as the Corporation considers to be appropriate.

(d) OTHER CONSIDERATIONS.—

(1) GEOGRAPHIC DIVERSITY.—The Corporation shall ensure that recipients of assistance provided under section 121 are geographically diverse and include projects to be conducted in

those urban and rural areas in a State with the highest rates of poverty.

(2) PRIORITIES.—The Corporation may designate, under such criteria as may be established by the Corporation, certain national service programs or types of national service programs described in subsection (a), (b), or (c) of section 122 for priority consideration in the competitive distribution of funds under section 129(d). In designating national service programs to receive priority, the Corporation may include—

(A) national service programs that—

(i) conform to the national service priorities in effect under section 122(f);

(ii) are innovative; and

(iii) are well established in 1 or more States at the time of the application and are proposed to be expanded to additional States using assistance provided under section 121;

(B) grant programs in support of other national service programs if the grant programs are to be conducted by nonprofit organizations with demonstrated and extensive expertise in the provision of services to meet human, educational, environmental, or public safety needs; and

(C) professional corps programs described in section 122(c)(1)(D).

(3) ADDITIONAL PRIORITY.—In making a competitive distribution of funds under section 129(d), the Corporation may give priority consideration to a national service program that is—

(A) proposed in an application submitted by a State Commission; and

(B) not one of the types of programs described in paragraph (2),

if the State Commission provides an adequate explanation of the reasons why it should not be a priority of such State to carry out any of such types of programs in the State.

(4) REVIEW PANEL.—The Corporation shall—

(A) establish panels of experts for the purpose of securing recommendations on applications submitted under section 130 for more than $250,000 in assistance, or for national service positions that would require more than $250,000 in national service educational awards; and

(B) consider the opinions of such panels prior to making such determinations.

(e) EMPHASIS ON AREAS MOST IN NEED.—In making assistance available under section 121 and in providing approved national service positions under section 123, the Corporation shall ensure that not less than 50 percent of the total amount of assistance to be distributed to States under subsections (d) and (e) of section 129 for a fiscal year is provided to carry out or support national service programs and projects that—

(1) are conducted in any of the areas described in subsection (c)(6) or on Federal or other public lands, to address unmet human, educational, environmental, or public safety needs in such areas or on such lands; and

(2) place a priority on the recruitment of participants who are residents of any of such areas or Federal or other public lands.

(f) VIEWS OF STATE COMMISSION.—In making competitive awards under section 129(d), the Corporation shall solicit and consider the views of a State Commission regarding any application for assistance to carry out a national service program within the State.

(g) REJECTION OF STATE APPLICATIONS.—

(1) NOTIFICATION OF STATE APPLICANTS.—If the Corporation rejects an application submitted by a State Commission under section 130 for funds described in section 129(e), the Corporation shall promptly notify the State Commission of the reasons for the rejection of the application.

(2) RESUBMISSION AND RECONSIDERATION.—The Corporation shall provide a State Commission notified under paragraph (1) with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation shall provide technical assistance to the State Commission as part of the resubmission process. The Corporation shall promptly reconsider an application resubmitted under this paragraph.

(3) REALLOTMENT.—The amount of any State's allotment under section 129(e) for a fiscal year that the Corporation determines will not be provided for that fiscal year shall be available for distribution by the Corporation as provided in section 129(f).

PART III—NATIONAL SERVICE PARTICIPANTS

SEC. 137. [42 U.S.C. 12591] DESCRIPTION OF PARTICIPANTS.

(a) IN GENERAL.—For purposes of this subtitle, an individual shall be considered to be a participant in a national service program carried out using assistance provided under section 121 if the individual—

(1) meets such eligibility requirements, directly related to the tasks to be accomplished, as may be established by the program;

(2) is selected by the program to serve in a position with the program;

(3) is 17 years of age or older at the time the individual begins the term of service;

(4) has received a high school diploma or its equivalent, agrees to obtain a high school diploma or its equivalent (unless this requirement is waived based on an individual education assessment conducted by the program) and the individual did not drop out of an elementary or secondary school to enroll in the program, or is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091); and

(5) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) SPECIAL RULES FOR CERTAIN YOUTH PROGRAMS.—An individual shall be considered to be a participant in a youth corps program described in section 122(a)(3)(B)(x) that is carried out with assistance provided under section 121(a) if the individual—

(1) satisfies the requirements specified in subsection (a), except paragraph (3) of such subsection; and

(2) is between the ages of 16 and 25, inclusive, at the time the individual begins the term of service.

(c) WAIVER.—The Corporation may waive the requirements of subsection (a)(4) with respect to an individual if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that the individual is incapable of obtaining a high school diploma or its equivalent.

SEC. 138. [42 U.S.C. 12592] SELECTION OF NATIONAL SERVICE PARTICIPANTS.

(a) SELECTION PROCESS.—Subject to subsections (b) and (c) and section 131(f), the actual recruitment and selection of an individual to serve in a national service program receiving assistance under section 121 or to fill an approved national service position shall be conducted by the entity to which the assistance and approved national service positions are provided.

(b) NONDISCRIMINATION AND NONPOLITICAL SELECTION OF PARTICIPANTS.—The recruitment and selection of individuals to serve in national service programs receiving assistance under section 121 or to fill approved national service positions shall be consistent with the requirements of section 175.

(c) SECOND TERM.—Acceptance into a national service program to serve a second term of service under section 139 shall only be available to individuals who perform satisfactorily in their first term of service.

(d) RECRUITMENT AND PLACEMENT.—The Corporation and each State Commission shall establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved national service positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The Corporation and State Commissions shall disseminate information regarding available approved national service positions through cooperation with secondary schools, institutions of higher education, employment service offices, 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 individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are individuals with disabilities.

(e) NATIONAL LEADERSHIP POOL.—

(1) SELECTION AND TRAINING.—From among individuals recruited under subsection (d), 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 shall be provided by the Corporation directly or through a grant or contract.

(2) EMPHASIS ON CERTAIN INDIVIDUALS.—In selecting individuals to receive leadership training under this subsection,

the Corporation shall make special efforts to select individuals who have served—

(A) in the Peace Corps;

(B) as VISTA volunteers;

(C) as participants in national service programs receiving assistance under section 121, particularly those who were considered, at the time of their service, disadvantaged youth;

(D) as participants in programs receiving assistance under subtitle D of the National and Community Service Act of 1990, as in effect on the day before the date of enactment of this subtitle; or

(E) 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 under the national service laws, the Corporation may assign an individual who receives leadership training under paragraph (1) 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 shall be considered to be a participant of the program.

(f) EVALUATION OF SERVICE.—The Corporation shall issue regulations regarding the manner and criteria by which the service of a participant shall be evaluated to determine whether the service is satisfactory and successful for purposes of eligibility for a second term of service or a national service educational award.

SEC. 139. [42 U.S.C. 12593] TERMS OF SERVICE.

(a) IN GENERAL.—As a condition of receiving a national service education award under subtitle D, a participant in an approved national service position shall be required to perform full- or part-time national service for at least one term of service specified in subsection (b).

(b) TERM OF SERVICE.—

(1) FULL-TIME SERVICE.—An individual performing full-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 1,700 hours during a period of not more than 1 year.

(2) PART-TIME SERVICE.—Except as provided in paragraph (3), an individual performing part-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 900 hours during a period of not more than 2 years.

(3) REDUCTION IN HOURS OF PART-TIME SERVICE.—The Corporation may reduce the number of hours required to be served to successfully complete part-time national service to a level determined by the Corporation, except that any reduction in the required term of service shall include a corresponding reduction in the amount of any national service educational award that may be available under subtitle D with regard to that service.

(4) EXTENSION OF TERM FOR DISASTER PURPOSES.—

(A) EXTENSION.—An individual in an approved national service position performing service directly related to disaster relief efforts may continue in a term of service for a period of 90 days beyond the period otherwise specified in, as appropriate, this subsection or section 153(d) or in section 104 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4954).

(B) SINGLE TERM OF SERVICE.—A period of service performed by an individual in an originally-agreed to term of service and service performed under this paragraph shall constitute a single term of service for purposes of subsections (b)(1) and (c) of section 146.

(C) BENEFITS.—An individual performing service under this paragraph may continue to receive a living allowance and other benefits under section 140 but may not receive an additional national service educational award under section 141.

(c) RELEASE FROM COMPLETING TERM OF SERVICE.—

(1) RELEASE AUTHORIZED.—A recipient of assistance under section 121 or a program sponsoring an approved national service position may release a participant from completing a term of service in the position—

(A) for compelling personal circumstances as determined by the organization responsible for granting the release, if the participant has otherwise performed satisfactorily and has completed at least 15 percent of the term of service; or

(B) for cause.

(2) EFFECT OF RELEASE FOR COMPELLING CIRCUMSTANCES.—If a participant eligible for release under paragraph (1)(A) is serving in an approved national service position, the recipient of assistance under section 121 or a program sponsoring an approved national service position may elect—

(A) to grant such release and certify the participant's eligibility for that portion of the national service educational award corresponding to the portion of the term of service actually completed, as provided in section 147(c); or

(B) to permit the participant to temporarily suspend performance of the term of service for a period of up to 2 years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to complete the remainder of the term of service and obtain the entire national service educational award.

(3) EFFECT OF RELEASE FOR CAUSE.—A participant released for cause may not receive any portion of the national service educational award.

SEC. 140. [42 U.S.C. 12594] LIVING ALLOWANCES FOR NATIONAL SERVICE PARTICIPANTS.

(a) PROVISION OF LIVING ALLOWANCE.—

(1) LIVING ALLOWANCE REQUIRED.—Subject to paragraphs (2) and (3), a national service program carried out using assistance provided under section 121 shall provide to each participant who participates on a full-time basis in the program a liv-

ing allowance in an amount equal to or greater than 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).

(2) MAXIMUM LIVING ALLOWANCE.—Except as provided in subsection (c), the total amount of an annual living allowance that may be provided to a participant in a national service program shall 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).

(3) FEDERAL WORK-STUDY STUDENTS.—The living allowance that may be provided under paragraph (1) to an individual whose term of service includes hours for which the individual receives a Federal work-study award under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.) shall be reduced by the amount of the individual's Federal work study award.

(4) PRORATION OF LIVING ALLOWANCE.—The amount provided as a living allowance under this subsection shall be prorated in the case of a participant who is authorized to serve a term of service that is less than 12 months.

(5) WAIVER OR REDUCTION OF LIVING ALLOWANCE.—The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(6) EXEMPTION.—The requirement of paragraph (1) shall not apply to any program that was in existence on the date of the enactment of the National and Community Service Trust Act of 1993.

(b) COVERAGE OF CERTAIN EMPLOYMENT-RELATED TAXES.—To the extent a national service program that receives assistance under section 121 is subject, with respect to the participants in the program, to the taxes imposed on an employer under sections 3111 and 3301 of the Internal Revenue Code of 1986 (26 U.S.C. 3111, 3301) and taxes imposed on an employer under a workmen's compensation act, the assistance provided to the program under section 121 may be used to pay the taxes described in this subsection.

(c) EXCEPTION FROM MAXIMUM LIVING ALLOWANCE FOR CERTAIN ASSISTANCE.—A professional corps program described in section 122(c)(1)(D) that desires to provide a living allowance in excess of the maximum allowance authorized in subsection (a)(2) may still apply for such assistance, except that—

(1) any assistance provided to the applicant under section 121 may not be used to pay for any portion of the allowance; and

(2) the national service program shall be operated directly by the applicant and shall meet urgent, unmet human, educational, environmental, or public safety needs, as determined by the Corporation.

(d) HEALTH INSURANCE.—

(1) IN GENERAL.—A State or other recipient of assistance under section 121 shall provide or make available a basic health care policy for each full-time participant in a national service program carried out or supported using the assistance, if the participant is not otherwise covered by a health care policy. The Corporation shall establish minimum standards that all plans must meet in order to qualify for payment under this part, any circumstances in which an alternative health care policy may be substituted for the basic health care policy, and mechanisms to prohibit participants from dropping existing coverage.

(2) OPTION.—A State or other recipient of assistance under section 121 may elect to provide from its own funds or make available a health care policy for participants that does not meet all of the standards established by the Corporation if the fair market value of such policy is equal to or greater than the fair market value of a plan that meets the minimum standards established by the Corporation, and is consistent with other applicable laws.

(e) CHILD CARE.—

(1) AVAILABILITY.—A State or other recipient of assistance under section 121 shall—

(A) make child care available for children of each full-time participant who needs child care in order to participate in a national service program carried out or supported by the recipient using the assistance; or

(B) provide a child care allowance to each full-time participant in a national service program who needs such assistance in order to participate in the program.

(2) GUIDELINES.—The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any allowance to be provided.

(f) INDIVIDUALIZED SUPPORT SERVICES.—A State or other recipient of assistance under section 121 shall 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))).

SEC. 141. [42 U.S.C. 12595] NATIONAL SERVICE EDUCATIONAL AWARDS.

(a) ELIGIBILITY GENERALLY.—A participant in a national service program carried out using assistance provided to an applicant under section 121 shall be eligible for the national service educational award described in subtitle D if the participant—

(1) serves in an approved national service position; and

(2) satisfies the eligibility requirements specified in section 146 with respect to service in that approved national service position.

(b) SPECIAL RULE FOR VISTA VOLUNTEERS.—A VISTA volunteer who serves in an approved national service position shall be ineligible for a national service educational award if the VISTA volunteer accepts the stipend authorized under section 105(a)(1) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955(a)(1)).

Subtitle D—National Service Trust and Provision of Educational Awards

SEC. 145. [42 U.S.C. 12601] ESTABLISHMENT OF THE NATIONAL SERVICE TRUST.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States an account to be known as the National Service Trust. The Trust shall consist of—

(1) from the amounts appropriated to the Corporation and made available to carry out this subtitle, such amounts as the Corporation may designate to be available for the payment of—

(A) national service educational awards, summer of service educational awards, and silver scholar educational awards; and

(B) interest expenses pursuant to section 148(e);

(2) any amounts received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 196(a)(2), if the terms of such donations direct that the donated amounts be deposited in the National Service Trust;

(3) any amounts recovered by the Corporation pursuant to section 146A; and

(4) the interest on, and proceeds from the sale or redemption of, any obligations held by the Trust.

(b) INVESTMENT OF TRUST.—It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the Trust. Except as otherwise expressly provided in instruments concerning a gift, bequest, devise, or other donation and agreed to by the Corporation, such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust may be sold by the Secretary at the market price.

(c) EXPENDITURES FROM TRUST.—Amounts in the Trust shall be available, to the extent provided for in advance by appropriation, for—

(1) payments of national service educational awards, summer of service educational awards, and silver scholar educational awards in accordance with section 148; and

(2) payments of interest in accordance with section 148(e).

(d) REPORTS TO THE AUTHORIZING COMMITTEES ON RECEIPTS AND EXPENDITURES.—Not later than March 1 of each year, the Corporation shall submit a report to the authorizing committees on the

financial status of the Trust during the preceding fiscal year. Such report shall—

(1) specify the amount deposited to the Trust from the most recent appropriation to the Corporation, the amount received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 196(a)(2) during the period covered by the report, and any amounts obtained by the Trust pursuant to subsection (a)(3);

(2) identify the number of individuals who are currently performing service to qualify, or have qualified, for national service educational awards, summer of service educational awards, or silver scholar awards;

(3) identify the number of individuals whose expectation to receive national service educational awards, summer of service educational awards, or silver scholar awards during the period covered by the report—

(A) has been reduced pursuant to section 147(c); or

(B) has lapsed pursuant to section 146(d); and

(4) estimate the number of additional approved national service positions, additional approved summer of service positions, and additional approved silver scholar positions that the Corporation will be able to make available on the basis of any accumulated surplus in the Trust above the amount required to provide national service educational awards, summer of service educational awards, or silver scholar awards to individuals identified under paragraph (2), including any amounts available as a result of the circumstances referred to in paragraph (3).

SEC. 146. [42 U.S.C. 12602] INDIVIDUALS ELIGIBLE TO RECEIVE AN EDUCATIONAL AWARD FROM THE TRUST.

(a) ELIGIBLE INDIVIDUALS.—An individual shall receive a national service educational award, summer of service educational award, or silver scholar educational award from the National Service Trust if the organization responsible for the individual's supervision in a national service program certifies that the individual—

(1) met the applicable eligibility requirements for the approved national service position, approved silver scholar position, or approved summer of service position, as appropriate, in which the individual served;

(2)(A) for a full-time or part-time national service educational award, successfully completed the required term of service described in subsection (b)(1) in the approved national service position;

(B) for a partial educational award in accordance with section 139(c)—

(i) satisfactorily performed prior to being granted a release for compelling personal circumstances under such section; and

(ii) completed at least 15 percent of the required term of service described in subsection (b) for the approved national service position;

(C) for a summer of service educational award, successfully completed the required term of service described in subsection (b)(2) in an approved summer of service position, as certified

through a process determined by the Corporation through regulations consistent with section 138(f); or

(D) for a silver scholar educational award, successfully completed the required term of service described in subsection (b)(3) in an approved silver scholar position, as certified through a process determined by the Corporation through regulations consistent with section 138(f); and

(3) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) TERM OF SERVICE.—

(1) APPROVED NATIONAL SERVICE POSITION.—The term of service for an approved national service position shall not be less than the full- or part-time term of service specified in section 139(b).

(2) APPROVED SUMMER OF SERVICE POSITION.—The term of service for an approved summer of service position shall not be less than 100 hours of service during the summer months.

(3) APPROVED SILVER SCHOLAR POSITION.—The term of service for an approved silver scholar position shall be not less than 350 hours during a 1-year period.

(c) LIMITATION ON RECEIPT OF NATIONAL SERVICE EDUCATIONAL AWARDS.—An individual may not receive, through national service educational awards and silver scholar educational awards, more than an amount equal to the aggregate value of 2 such awards for full-time service. The value of summer of service educational awards that an individual receives shall have no effect on the aggregate value of the national service educational awards the individual may receive.

(d) TIME FOR USE OF EDUCATIONAL AWARD.—

(1) IN GENERAL.—Subject to paragraph (2), an individual eligible to receive a national service educational award or a silver scholar educational award under this section may not use such award after the end of the 7-year period beginning on the date the individual completes the term of service in an approved national service position or an approved silver scholar position, as applicable, that is the basis of the award. Subject to paragraph (2), an individual eligible to receive a summer of service educational award under this section may not use such award after the end of the 10-year period beginning on the date the individual completes the term of service in an approved summer of service position that is the basis of the award.

(2) EXCEPTION.—The Corporation may extend the period within which an individual may use a national service educational award, summer of service educational award, or silver scholar educational award if the Corporation determines that the individual—

(A) was unavoidably prevented from using the national service educational award, summer of service educational award, or silver scholar educational award during the original 7-year period, or 10-year period, as appropriate; or

(B) performed another term of service in an approved national service position, approved summer of service position, or approved silver scholar position during that period.

(3) TERM FOR TRANSFERRED EDUCATIONAL AWARDS.—For purposes of applying paragraphs (1) and (2)(A) to an individual who is eligible to receive an educational award as a designated individual (as defined in section 148(f)(8)), references to a seven-year period shall be considered to be references to a 10-year period that begins on the date the individual who transferred the educational award to the designated individual completed the term of service in the approved national service position or approved silver scholar position that is the basis of the award.

(e) SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.—

(1) IN GENERAL.—An individual who, after qualifying under this section or under section 119(c)(8) as an eligible individual, has been convicted under any Federal or State law of the possession or sale of a controlled substance shall not be eligible to receive a national service educational award, a summer of service educational award, or a silver scholar educational award during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of:	
The possession of a controlled substance:	Ineligibility period is:
1st conviction	1 year
2nd conviction	2 years
3rd conviction	indefinite
The sale of a controlled substance:	
1st conviction	2 years
2nd conviction	indefinite

(2) REHABILITATION.—An individual whose eligibility has been suspended under paragraph (1) shall resume eligibility before the end of the period determined under such paragraph if the individual satisfactorily completes a drug rehabilitation program that complies with such criteria as the Corporation shall prescribe for purposes of this paragraph.

(3) FIRST CONVICTIONS.—An individual whose eligibility has been suspended under paragraph (1) and is convicted of a first offense may resume eligibility before the end of the period determined under such paragraph if the individual demonstrates that he or she has enrolled or been accepted for enrollment in a drug rehabilitation program described in paragraph (2).

(4) DEFINITIONS.—As used in this subsection, the term "controlled substance" has the meaning given in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(5) EFFECTIVE DATE.—This subsection shall be effective upon publication by the Corporation in the Federal Register of criteria prescribed under paragraph (2).

(f) AUTHORITY TO ESTABLISH DEMONSTRATION PROGRAMS.—The Corporation may establish by regulation demonstration programs

for the creation and evaluation of innovative volunteer and community service programs.

SEC. 146A. [42 U.S.C. 12602a] CERTIFICATIONS OF SUCCESSFUL COMPLETION OF TERMS OF SERVICE.

(a) CERTIFICATIONS.—In making any authorized disbursement from the National Service Trust in regard to an eligible individual (including disbursement for a designated individual, as defined in section 148(f)(8), due to the service of an eligible individual) under section 146 who served in an approved national service position, an approved summer of service position, or an approved silver scholar position, the Corporation shall rely on a certification. The certification shall be made by the entity that selected the individual for and supervised the individual in the approved national service position in which such individual successfully completed a required term of service, in a national service program.

(b) EFFECT OF ERRONEOUS CERTIFICATIONS.—If the Corporation determines that the certification under subsection (a) is erroneous or incorrect, the Corporation shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust. In assessing the amount of the charge, the Corporation shall consider the full facts and circumstances surrounding the erroneous or incorrect certification.

SEC. 147. [42 U.S.C. 12603] DETERMINATION OF THE AMOUNT OF THE EDUCATIONAL AWARD.

(a) AMOUNT FOR FULL-TIME NATIONAL SERVICE.—Except as provided in subsection (c), an individual described in section 146(a) who successfully completes a required term of full-time national service in an approved national service position shall receive a national service educational award having a value 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 (without regard to whether the funds are provided through discretionary or mandatory appropriations), for the award year for which the national service position is approved by the Corporation.

(b) AMOUNT FOR PART-TIME NATIONAL SERVICE.—Except as provided in subsection (c), an individual described in section 146(a) who successfully completes a required term of part-time national service in an approved national service position shall receive a national service educational award having a value equal to 50 percent of value of the national service educational award determined under subsection (a).

(c) AWARD FOR PARTIAL COMPLETION OF SERVICE.—If an individual serving in an approved national service position is released in accordance with section 139(c)(1)(A) from completing the full-time or part-time term of service agreed to by the individual, the Corporation may provide the individual with that portion of the national service educational award approved for the individual that corresponds to the quantity of the term of service actually completed by the individual.

(d) AMOUNT FOR SUMMER OF SERVICE.—An individual described in section 146(a) who successfully completes a required

summer of service term shall receive a summer of service educational award having a value, for each of not more than 2 of such terms of service, equal to $500 (or, at the discretion of the Chief Executive Officer, equal to $750 in the case of a participant who is economically disadvantaged).

(e) AMOUNT FOR SILVER SCHOLARS.—An individual described in section 146(a) who successfully completes a required silver scholar term shall receive a silver scholar educational award having a value of $1,000.

SEC. 148. [42 U.S.C. 12604] DISBURSEMENT OF EDUCATIONAL AWARDS.

(a) IN GENERAL.—Amounts in the Trust shall be available—

(1) to repay student loans in accordance with subsection (b);

(2) to pay all or part of the cost of attendance or other educational expenses at an institution of higher education in accordance with subsection (c);

(3) to pay expenses incurred in participating in an approved school-to-work program in accordance with subsection (d);

(4) to pay expenses incurred in enrolling in an educational institution or training establishment that is approved under chapter 36 of title 38, United States Code, or other applicable provisions of law, for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs; and

(5) to pay interest expenses in accordance with regulations prescribed pursuant to subsection (e).

(b) USE OF EDUCATIONAL AWARD TO REPAY OUTSTANDING STUDENT LOANS.—

(1) APPLICATION BY ELIGIBLE INDIVIDUALS.—An eligible individual under section 146 who desires to apply the national service educational award of the individual, an eligible individual under section 146(a) who served in a summer of service program and desires to apply that individual's summer of service educational award, or an eligible individual under section 146(a) who served in a silver scholar program and desires to apply that individual's silver scholar educational award, to the repayment of qualified student loans shall submit, in a manner prescribed by the Corporation, an application to the Corporation that—

(A) identifies, or permits the Corporation to identify readily, the holder or holders of such loans;

(B) indicates, or permits the Corporation to determine readily, the amounts of principal and interest outstanding on the loans;

(C) specifies, if the outstanding balance is greater than the amount disbursed under paragraph (2), which of the loans the individual prefers to be paid by the Corporation; and

(D) contains or is accompanied by such other information as the Corporation may require.

(2) DISBURSEMENT OF REPAYMENTS.—Upon receipt of an application from an eligible individual of an application that

complies with paragraph (1), the Corporation shall, as promptly as practicable consistent with paragraph (5), disburse the amount of the national service educational award, the summer of service educational award, or the silver scholar educational award, as applicable, that the eligible individual has earned. Such disbursement shall be made by check or other means that is payable to the holder of the loan and requires the endorsement or other certification by the eligible individual.

(3) APPLICATION OF DISBURSED AMOUNTS.—If the amount disbursed under paragraph (2) is less than the principal and accrued interest on any qualified student loan, such amount shall be applied according to the specified priorities of the individual.

(4) REPORTS BY HOLDERS.—Any holder receiving a loan payment pursuant to this subsection shall submit to the Corporation such information as the Corporation may require to verify that such payment was applied in accordance with this subsection and any regulations prescribed to carry out this subsection.

(5) NOTIFICATION OF INDIVIDUAL.—The Corporation upon disbursing the national service educational award, the summer of service educational award, or the silver scholar educational award, as applicable, shall notify the individual of the amount paid for each outstanding loan and the date of payment.

(6) AUTHORITY TO AGGREGATE PAYMENTS.—The Corporation may, by regulation, provide for the aggregation of payments to holders under this subsection.

(7) DEFINITION OF QUALIFIED STUDENT LOANS.—As used in this subsection, the term "qualified student loans" means—

(A) any loan made, insured, or guaranteed pursuant to 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 pursuant to section 428B of such Act (20 U.S.C. 1078–2);

(B) any loan made pursuant to title VII or VIII of the Public Health Service Act (42 U.S.C. 292a et seq.); and

(C) any loan (other than a loan described in subparagraph (A) or (B)) determined by an institution of higher education 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 such Act (20 U.S.C. 1087a et seq.);

(iii) a State agency; or

(iv) a lender otherwise determined by the Corporation to be eligible to receive disbursements from the National Service Trust.

(8) DEFINITION OF HOLDER.—As used in this subsection, the term "holder" with respect to any eligible loan means the original lender or, if the loan is subsequently sold, transferred, or assigned to some other person, and such other person acquires a legally enforceable right to receive payments from the borrower, such other person.

(c) USE OF EDUCATIONAL AWARDS TO PAY CURRENT EDUCATIONAL EXPENSES.—

(1) APPLICATION BY ELIGIBLE INDIVIDUAL.—An eligible individual under section 146 who desires to apply the individual's national service educational award, an eligible individual under section 146(a) who desires to apply the individual's summer of service educational award, or an eligible individual under section 146(a) who served in a silver scholar program and desires to apply that individual's silver scholar educational award, to the payment of current full-time or part-time educational expenses shall, on a form prescribed by the Corporation, submit an application to the institution of higher education in which the student will be enrolled that contains such information as the Corporation may require to verify the individual's eligibility.

(2) SUBMISSION OF REQUESTS FOR PAYMENT BY INSTITUTIONS.—An institution of higher education that receives one or more applications that comply with paragraph (1) shall submit to the Corporation a statement, in a manner prescribed by the Corporation, that—

(A) identifies each eligible individual filing an application under paragraph (1) for a disbursement of the individual's national service educational award, summer of service educational award, or silver scholar educational award, as applicable, under this subsection;

(B) specifies the amounts for which such eligible individuals are, consistent with paragraph (6), qualified for disbursement under this subsection;

(C) certifies that—

(i) the institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) the institution's eligibility to participate in any of the programs under title IV of such Act (20 U.S.C. 1070 et seq.) has not been limited, suspended, or terminated; and

(iii) individuals using national service educational awards, summer of service educational awards, or silver scholar educational awards, as applicable, received under this subtitle to pay for educational costs do not comprise more than 15 percent of the total student population of the institution; and

(D) contains such provisions concerning financial compliance as the Corporation may require.

(3) DISBURSEMENT OF PAYMENTS.—Upon receipt of a statement from an institution of higher education that complies with paragraph (2), the Corporation shall, subject to paragraph (4), disburse the total amount of the national service educational awards summer of service educational awards, or silver scholar educational awards for which eligible individuals who have submitted applications to that institution under paragraph (1) are scheduled to receive. Such disbursement shall be made by check or other means that is payable to the

institution and requires the endorsement or other certification by the eligible individual.

(4) MULTIPLE DISBURSEMENTS REQUIRED.—The total amount required to be disbursed to an institution of higher education under paragraph (3) for any period of enrollment shall be disbursed by the Corporation in 2 or more installments, none of which exceeds ½ of such total amount. The interval between the first and second such installment shall not be less than ½ of such period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(5) REFUND RULES.—The Corporation shall, by regulation, provide for the refund to the Corporation (and the crediting to the national service educational award, summer of service educational award, or silver scholar educational award, as applicable, of an eligible individual) of amounts disbursed to institutions for the benefit of eligible individuals who withdraw or otherwise fail to complete the period of enrollment for which the assistance was provided. Such regulations shall be consistent with the fair and equitable refund policies required of institutions pursuant to section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b). Amounts refunded to the Trust pursuant to this paragraph may be used by the Corporation to fund additional approved national service positions under subtitle C, additional approved summer of service positions, and additional approved silver scholar positions.

(6) MAXIMUM AWARD.—The portion of an eligible individual's total available national service educational award, summer of service educational award, or silver scholar educational award that may be disbursed under this subsection for any period of enrollment shall not exceed the difference between—

(A) the eligible individual's cost of attendance and other educational expenses for such period of enrollment, determined in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll); and

(B) the student's estimated financial assistance for such period under part A of title IV of such Act (20 U.S.C. 1070 et seq.).

(d) USE OF EDUCATIONAL AWARD TO PARTICIPATE IN APPROVED SCHOOL-TO-WORK PROGRAMS.—The Corporation shall by regulation provide for the payment of national service educational awards, summer of service educational awards, and silver scholar educational awards to permit eligible individuals to participate in school-to-work programs approved by the Secretaries of Labor and Education.

(e) INTEREST PAYMENTS DURING FORBEARANCE ON LOAN REPAYMENT.—The Corporation shall provide by regulation for the payment on behalf of an eligible individual of interest that accrues during a period for which such individual has obtained forbearance in the repayment of a qualified student loan (as defined in subsection (b)(7)), if the eligible individual successfully completes the individual's required term of service (as determined under section

146(b)). Such regulations shall be prescribed after consultation with the Secretary of Education.

(f) TRANSFER OF EDUCATIONAL AWARDS.—

(1) IN GENERAL.—An individual who is eligible to receive a national service educational award or silver scholar educational award due to service in a program described in paragraph (2) may elect to receive the award (in the amount described in the corresponding provision of section 147) and transfer the award to a designated individual. Subsections (b), (c), and (d) shall apply to the designated individual in lieu of the individual who is eligible to receive the national service educational award or silver scholar educational award, except that amounts refunded to the account under subsection (c)(5) on behalf of a designated individual may be used by the Corporation to fund additional placements in the national service program in which the eligible individual who transferred the national service educational award or silver scholar educational award participated for such award.

(2) CONDITIONS FOR TRANSFER.—An educational award may be transferred under this subsection if—

(A)(i) the award is a national service educational award for service in a national service program that receives a grant under subtitle C; and

(ii) before beginning the term of service involved, the eligible individual is age 55 or older; or

(B) the award is a silver scholarship educational award under section 198C(a).

(3) MODIFICATION OR REVOCATION.—

(A) IN GENERAL.—An individual transferring an educational award under this subsection may, on any date on which a portion of the educational award remains unused, modify or revoke the transfer of the educational award with respect to that portion.

(B) NOTICE.—A modification or revocation of the transfer of an educational award under this paragraph shall be made by the submission of written notice to the Corporation.

(4) PROHIBITION ON TREATMENT OF TRANSFERRED AWARD AS MARITAL PROPERTY.—An educational 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.

(5) DEATH OF TRANSFEROR.—The death of an individual transferring an educational award under this subsection shall not affect the use of the educational award by the child, foster child, or grandchild to whom the educational award is transferred if such educational award is transferred prior to the death of the individual.

(6) PROCEDURES TO PREVENT WASTE, FRAUD, OR ABUSE.—The Corporation shall establish requirements to prevent waste, fraud, or abuse in connection with the transfer of an educational award and to protect the integrity of the educational award under this subsection.

(7) TECHNICAL ASSISTANCE.—The Corporation may, as appropriate, provide technical assistance, to individuals and eligible entities carrying out national service programs, concerning carrying out this subsection.

(8) DEFINITION OF A DESIGNATED INDIVIDUAL.—In this subsection, the term "designated individual" is an individual—

(A) whom an individual who is eligible to receive a national service educational award or silver scholar educational award due to service in a program described in paragraph (2) designates to receive the educational award;

(B) who meets the eligibility requirements of paragraphs (3) and (4) of section 146(a); and

(C) who is a child, foster child, or grandchild of the individual described in subparagraph (A).

(g) EXCEPTION.—With the approval of the Chief Executive Officer, an approved national service program funded under section 121, may offer participants the option of waiving their right to receive a national service educational award, summer of service educational award, or silver scholar educational award, as appropriate, in order to receive an alternative post-service benefit funded by the program entirely with non-Federal funds.

(h) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—Notwithstanding section 101 of this Act, for purposes of this section the term "institution of higher education" has the meaning provided by section 102 of the Higher Education Act of 1965.

SEC. 149. [42 U.S.C. 12606] APPROVAL PROCESS FOR APPROVED POSITIONS.

(a) TIMING AND RECORDING REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding subtitles C, D, and H, and any other provision of law, in approving a position as an approved national service position, an approved summer of service position, or an approved silver scholar position, the Corporation—

(A) shall approve the position at the time the Corporation—

(i) enters into an enforceable agreement with an individual participant to serve in a program carried out under subtitle E of title I of this Act, section 198B or 198C(a), or under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), a summer of service program described in section 119(c)(8), or a silver scholarship program described in section 198C(a); or

(ii) except as provided in clause (i), awards a grant to (or enters into a contract or cooperative agreement with) an entity to carry out a program for which such a position is approved under section 123; and

(B) shall record as an obligation an estimate of the net present value of the national service educational award, summer of service educational award, or silver scholar educational award associated with the position, based on a formula that takes into consideration historical rates of enrollment in such a program, and of earning and using national service educational awards, summer of service edu-

cational awards, or silver scholar educational awards, as appropriate, for such a program and remain available.

(2) FORMULA.—In determining the formula described in paragraph (1)(B), the Corporation shall consult with the Director of the Congressional Budget Office.

(3) CERTIFICATION REPORT.—The Chief Executive Officer of the Corporation shall annually prepare and submit to the authorizing committees a report that contains a certification that the Corporation is in compliance with the requirements of paragraph (1).

(4) APPROVAL.—The requirements of this subsection shall apply to each approved national service position, approved summer of service position, or approved silver scholarship position that the Corporation approves—

(A) during fiscal year 2010; and

(B) during any subsequent fiscal year.

(b) RESERVE ACCOUNT.—

(1) ESTABLISHMENT AND CONTENTS.—

(A) ESTABLISHMENT.—Notwithstanding subtitles C, D, and H, and any other provision of law, within the National Service Trust established under section 145, the Corporation shall establish a reserve account.

(B) CONTENTS.—To ensure the availability of adequate funds to support the awards of approved national service positions, approved summer of service positions, and approved silver scholar positions, for each fiscal year, the Corporation shall place in the account—

(i) during fiscal year 2010, a portion of the funds that were appropriated for fiscal year 2010 or a previous fiscal year under section 501 of this Act or section 501 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5081), were made available to carry out subtitle C, D, or E of this title, section 198B or 198C(a), subtitle A of title I of the Domestic Volunteer Service Act of 1973, or summer of service programs described in section 119(c)(8), and remain available; and

(ii) during fiscal year 2011 or a subsequent fiscal year, a portion of the funds that were appropriated for that fiscal year under section 501 of this Act or section 501 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5081), were made available to carry out subtitle C, D, or E of this title, section 198B or 198C(a), subtitle A of title I of the Domestic Volunteer Service Act of 1973, or summer of service programs described in section 119(c)(8), and remain available.

(2) OBLIGATION.—The Corporation shall not obligate the funds in the reserve account until the Corporation—

(A) determines that the funds will not be needed for the payment of national service educational awards associated with previously approved national service positions, summer of service educational awards associated with previously approved summer of service positions, and silver

scholar educational awards associated with previously approved silver scholar positions; or

(B) obligates the funds for the payment of national service educational awards for such previously approved national service positions, summer of service educational awards for such previously approved summer of service positions, or silver scholar educational awards for such previously approved silver scholar positions, as applicable.

(c) AUDITS.—The accounts of the Corporation relating to the appropriated funds for approved national service positions, approved summer of service positions, and approved silver scholar positions, and the records demonstrating the manner in which the Corporation has recorded estimates described in subsection (a)(1)(B) as obligations, shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. A report containing the results of each such independent audit shall be included in the annual report required by subsection (a)(3).

(d) AVAILABILITY OF AMOUNTS.—Except as provided in subsection (b), all amounts included in the National Service Trust under paragraphs (1), (2), and (3) of section 145(a) shall be available for payments of national service educational awards, summer of service educational awards, or silver scholar educational awards under section 148.

Subtitle E—National Civilian Community Corps

SEC. 151. [42 U.S.C. 12611] PURPOSE.

It is the purpose of this subtitle to authorize the operation of, and support for, residential and other service programs that combine the best practices of civilian service with the best aspects of military service, including leadership and team building, to meet national and community needs. The needs to be met under such programs include those needs related to—

(1) natural and other disasters;

(2) infrastructure improvement;

(3) environmental stewardship and conservation;

(4) energy conservation; and

(5) urban and rural development.

SEC. 152. [42 U.S.C. 12612] ESTABLISHMENT OF NATIONAL CIVILIAN COMMUNITY CORPS PROGRAM.

(a) IN GENERAL.—The Corporation may establish the National Civilian Community Corps Program to carry out the purpose of this subtitle.

(b) PROGRAM COMPONENTS.—Under the National Civilian Community Corps Program authorized by subsection (a), the members of a National Civilian Community Corps shall receive training and perform service in at least one of the following two program components:

(1) A national service program.

(2) A summer national service program.

(c) RESIDENTIAL COMPONENTS.—Both programs referred to in subsection (b) may include a residential component.

SEC. 153. [42 U.S.C. 12613] NATIONAL SERVICE PROGRAM.

(a) IN GENERAL.—Under the national service program component of the National Civilian Community Corps Program authorized by section 152(a), eligible young people shall work in teams on National Civilian Community Corps projects.

(b) ELIGIBLE PARTICIPANTS.—A person shall be eligible for selection for the national service program if the person—

(1) is, or will be, at least 18 years of age on or before December 31 of the calendar year in which the individual enrolls in the program, but is not more than 24 years of age as of the date the individual begins participating in the program; and

(2) is a high school graduate or has not received a high school diploma or its equivalent.

(c) DIVERSE BACKGROUNDS OF PARTICIPANTS.—In selecting persons for the national service program, the Director shall endeavor to ensure that participants are from economically, geographically, and ethnically diverse backgrounds. The Director shall take appropriate steps, including through outreach and recruitment activities, to increase the percentage of participants in the program who are disadvantaged youth to 50 percent of all participants by year 2012. The Director shall report to the authorizing committees biennially on such steps, any challenges faced, and the annual participation rates of disadvantaged youth in the program.

(d) PERIOD OF PARTICIPATION.—Persons desiring to participate in the national service program shall enter into an agreement with the Director to participate in the Corps for a period of not less than nine months and not more than one year, as specified by the Director, and may renew the agreement for not more than one additional such period.

SEC. 154. [42 U.S.C. 12614] SUMMER NATIONAL SERVICE PROGRAM.

(a) IN GENERAL.—Under the summer national service program of the National Civilian Community Corps Program authorized by section 152(a), a diverse group of youth aged 14 through 18 years who are from urban or rural areas shall work in teams on National Civilian Community Corps projects.

(b) NECESSARY PARTICIPANTS.—To the extent practicable, at least 50 percent of the participants in the summer national service program shall be from economically and ethnically diverse backgrounds, including youth who are in foster care.

(c) SEASONAL PROGRAM.—The training and service of Corps members under the summer national service program in each year shall be conducted after April 30 and before October 1 of that year.

SEC. 155. [42 U.S.C. 12615] NATIONAL CIVILIAN COMMUNITY CORPS.

(a) DIRECTOR.—Upon the establishment of the National Civilian Community Corps Program, the National Civilian Community Corps shall be under the direction of the Director appointed pursuant to section 159(c)(1).

(b) MEMBERSHIP IN NATIONAL CIVILIAN COMMUNITY CORPS.—

(1) PARTICIPANTS TO BE MEMBERS.—Persons selected to participate in the national service program or the summer national service program components of the Program shall become members of the National Civilian Community Corps.

(2) SELECTION OF MEMBERS.—The Director or the Director's designee shall select individuals for membership in the Corps.

(3) APPLICATION FOR MEMBERSHIP.—To be selected to become a Corps member an individual shall submit an application to the Director or to any other office as the Director may designate, at such time, in such manner, and containing such information as the Director shall require. At a minimum, the application shall contain information about the work experience of the applicant and sufficient information to enable the Director, or the campus director of the appropriate campus, to determine whether selection of the applicant for membership in the Corps is appropriate.

(4) TEAM LEADERS.—

(A) IN GENERAL.—The Director may select individuals with prior supervisory or service experience to be team leaders within units in the National Civilian Community Corps, to perform service that includes leading and supervising teams of Corps members. Each team leader shall be selected without regard to the age limitation under section 153(b).

(B) RIGHTS AND BENEFITS.—A team leader shall be provided the same rights and benefits applicable to other Corps members, except that the Director may increase the limitation on the amount of the living allowance under section 158(b) by not more than 10 percent for a team leader.

(c) ORGANIZATION OF CORPS INTO UNITS.—

(1) UNITS.—The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

(2) UNIT LEADERS.—The leader of each unit shall be selected from among persons in the permanent cadre established pursuant to section 159(c)(2). The designated leader shall accompany the unit throughout the period of agreed service of the members of the unit.

(d) CAMPUSES.—

(1) UNITS TO BE ASSIGNED TO CAMPUSES.—The units of the Corps shall be grouped together as appropriate in campuses for operational, support, and boarding purposes. The Corps campus for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the campuses.

(2) CAMPUS DIRECTOR.—There shall be a campus director for each campus. The campus director is the head of the campus.

(3) ELIGIBLE SITE FOR CAMPUS.—A campus shall be cost effective and may, upon the completion of a feasibility study, be located in a facility referred to in section 162(c).

(e) DISTRIBUTION OF UNITS AND CAMPUSES.—The Director shall ensure that the Corps units and campuses are cost effective and are distributed in urban areas and rural areas such that each

Corps unit in a region can be easily deployed for disaster and emergency response to such region.

(f) STANDARDS OF CONDUCT.—

(1) IN GENERAL.—The campus director of each campus shall establish and enforce standards of conduct to promote proper moral and disciplinary conditions in the campus.

(2) SANCTIONS.—Under procedures prescribed by the Director, the campus director of a campus may—

(A) transfer a member of the Corps in that campus to another unit or campus if the campus director determines that the retention of the member in the member's unit or in the campus director's campus will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members in that unit or campus, as the case may be; or

(B) dismiss a member of the Corps from the Corps if the campus director determines that retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

(3) APPEALS.—Under procedures prescribed by the Director, a member of the Corps may appeal to the Director a determination of a campus director to transfer or dismiss the member. The Director shall provide for expeditious disposition of appeals under this paragraph.

SEC. 156. [42 U.S.C. 12616] TRAINING.

(a) COMMON CURRICULUM.—Each member of the National Civilian Community Corps shall be provided with between three and six weeks of training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work, training, citizenship, and physical conditioning. The Director shall ensure that, to the extent practicable, each member of the Corps is trained in CPR, first aid, and other skills related to disaster preparedness and response.

(b) ADVANCED SERVICE TRAINING.—

(1) NATIONAL SERVICE PROGRAM.—Members of the Corps participating in the national service program shall receive advanced training in basic, project-specific skills that the members will use in performing their community service projects, including a focus on energy conservation, environmental stewardship or conservation, infrastructure improvement, urban and rural development, or disaster preparedness needs, as appropriate.

(2) SUMMER NATIONAL SERVICE PROGRAM.—Members of the Corps participating in the summer national service program shall not receive advanced training referred to in paragraph (1) but, to the extent practicable, may receive other training.

(c) TRAINING PERSONNEL.—

(1) IN GENERAL.—Members of the cadre appointed under section 159(c)(2) shall provide the training for the members of the Corps, including, as appropriate, advanced service training and ongoing training throughout the members' periods of agreed service.

(2) COORDINATION WITH OTHER ENTITIES.—Members of the cadre may provide, either directly or through grants, contracts, or cooperative agreements, the advanced service training referred to in subsection (b)(1) in coordination with vocational or technical schools, other employment and training providers, existing youth service programs, other qualified individuals, or organizations with expertise in training youth, including disadvantaged youth, in the skills described in such subsection.

(d) FACILITIES.—The training may be provided at installations and other facilities of the Department of Defense, and at National Guard facilities, identified under section 162(c).

SEC. 157. [42 U.S.C. 12617] SERVICE PROJECTS.

(a) PROJECT REQUIREMENTS.—The service projects carried out by the National Civilian Community Corps shall—

(1) meet an identifiable public need, with specific emphasis on projects in support of infrastructure improvement, energy conservation, and urban and rural development;

(2) emphasize the performance of community service activities that provide meaningful community benefits and opportunities for service-learning and skills development;

(3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together; and

(4) include continued education and training in various technical fields.

(b) PROJECT PROPOSALS.—

(1) DEVELOPMENT OF PROPOSALS.—

(A) SPECIFIC EXECUTIVE DEPARTMENTS.—Upon the establishment of the Program, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Administrator of the Environmental Protection Agency, the Administrator of the Federal Emergency Management Agency, the Secretary of Energy, the Secretary of Transportation, and the Chief of the Forest Service shall develop proposals for Corps projects pursuant to guidance which the Director shall prescribe.

(B) OTHER SOURCES.—Other public and private organizations and agencies, including community-based entities and representatives of local communities in the vicinity of a Corps campus, may develop proposals for projects for a Corps campus. Corps members shall also be encouraged to identify projects for the Corps.

(2) CONSULTATION REQUIREMENTS.—The process for developing project proposals under paragraph (1) shall include consultation with the Corporation, representatives of local communities, State Commissions, and persons involved in other youth service programs.

(c) PROJECT SELECTION, ORGANIZATION, AND PERFORMANCE.—

(1) SELECTION.—The campus director of a Corps campus shall select the projects to be performed by the members of the Corps assigned to the units in that campus. The campus director shall select projects from among the projects proposed or identified pursuant to subsection (b).

(2) INNOVATIVE LOCAL ARRANGEMENTS FOR PROJECT PERFORMANCE.—The Director shall encourage campus directors to negotiate with representatives of local communities, to the extent practicable, innovative arrangements for the performance of projects. The arrangements may provide for cost-sharing and the provision by the communities of in-kind support and other support.

SEC. 158. [42 U.S.C. 12618] AUTHORIZED BENEFITS FOR CORPS MEMBERS.

(a) IN GENERAL.—The Director shall provide for members of the National Civilian Community Corps to receive benefits authorized by this section.

(b) LIVING ALLOWANCE.—The Director shall provide a living allowance to members of the Corps for the period during which such members are engaged in training or any activity on a Corps project. The Director shall establish the amount of the allowance at any amount not in excess of the amount equal to 100 percent of the poverty line that is applicable to a family of two (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(c) OTHER AUTHORIZED BENEFITS.—While receiving training or engaging in service projects as members of the National Civilian Community Corps, members may be provided the following benefits, as the Director determines appropriate:

(1) Allowances for travel expenses, personal expenses, and other expenses.

(2) Quarters.

(3) Subsistence.

(4) Transportation.

(5) Equipment.

(6) Uniforms.

(7) Supplies.

(8) Other services determined by the Director to be consistent with the purposes of the Program.

(d) SUPPORTIVE SERVICES.—As the Director determines appropriate, the Director may provide each member of the Corps with health care services, child care services, counseling services, and other supportive services.

(e) POST SERVICE BENEFITS.—Upon completion of the agreed period of service with the Corps, a member shall elect to receive the educational assistance under subsection (f) or the cash benefit under subsection (g).

(f) NATIONAL SERVICE EDUCATIONAL AWARDS.—A Corps member who successfully completes a period of agreed service in the Corps may receive the national service educational award described in subtitle D if the Corps member—

(1) serves in an approved national service position; and

(2) satisfies the eligibility requirements specified in section 146 with respect to service in that approved national service position.

(g) ALTERNATIVE BENEFIT.—If a Corps member who successfully completes a period of agreed service in the Corps is ineligible for the national service educational award described in subtitle D,

the Director may provide for the provision of a suitable alternative benefit for the Corps member.

SEC. 159. [42 U.S.C. 12619] ADMINISTRATIVE PROVISIONS.

(a) SUPERVISION.—The Chief Executive Officer shall monitor and supervise the administration of the National Civilian Community Corps Program authorized to be established under section 152. In carrying out this section, the Chief Executive Officer shall—

(1) approve such guidelines, including those recommended by the Board, for the design, selection of members, and operation of the National Civilian Community Corps as the Chief Executive Officer considers appropriate;

(2) evaluate the progress of the Corps in providing a basis for determining the matters set forth in section 151; and

(3) carry out any other activities determined appropriate by the Board.

(b) MONITORING AND COORDINATION.—The Chief Executive Officer shall—

(1) monitor the overall operation of the National Civilian Community Corps;

(2) coordinate the activities of the Corps with other youth service programs administered by the Corporation; and

(3) carry out any other activities determined appropriate by the Board.

(c) STAFF.—

(1) DIRECTOR.—

(A) APPOINTMENT.—Upon the establishment of the Program, the Chief Executive Officer shall appoint a Director. The Director may be selected from among retired commissioned officers of the Armed Forces of the United States.

(B) DUTIES.—The Director shall—

(i) design, develop, and administer the National Civilian Community Corps programs;

(ii) be responsible for managing the daily operations of the Corps; and

(iii) report to the Chief Executive Officer.

(C) AUTHORITY TO EMPLOY STAFF.—The Director may employ such staff as is necessary to carry out this subtitle. The Director shall, to the maximum extent practicable, utilize in staff positions personnel who are detailed from departments and agencies of the Federal Government and, to the extent the Director considers appropriate, shall request and accept detail of personnel from such departments and agencies in order to do so.

(2) PERMANENT CADRE.—

(A) ESTABLISHMENT.—The Chief Executive Officer shall establish a permanent cadre that includes the Director and other appointed supervisors and training instructors for National Civilian Community Corps programs.

(B) APPOINTMENT.—The Chief Executive Officer shall consider the recommendations of the Director in appointing the other members of the permanent cadre.

(C) EMPLOYMENT CONSIDERATIONS.—In appointing individuals to cadre positions, the Chief Executive Officer shall—

(i) give consideration to retired, discharged, and other inactive members and former members of the Armed Forces recommended under section 162(b);

(ii) give consideration to former VISTA, Peace Corps, and youth service program personnel;

(iii) ensure that the cadre is comprised of males and females of diverse ethnic, economic, professional, and geographic backgrounds;

(iv) give consideration to retired and other former law enforcement, fire, rescue, and emergency personnel, and other individuals with backgrounds in disaster preparedness, relief, and recovery; and

(v) consider applicants' experience in other youth service programs.

(D) COMMUNITY SERVICE CREDIT.—Service as a member of the cadre shall be considered as a community service opportunity for purposes of section 4403 of the National Defense Authorization Act for Fiscal Year 1993 and as employment with a public service or community service organization for purposes of section 4464 of that Act.

(E) TRAINING.—The Director shall provide to other members of the permanent cadre appropriate training in youth development techniques, including techniques for working with and enhancing the development of disadvantaged youth, and the principles of service-learning. All members of the permanent cadre shall be required to participate in the training.

(3) INAPPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director, other members of the permanent cadre, and the other staff personnel shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The rates of pay of such persons may be established without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. In the case of a member of the permanent cadre who was recommended for appointment in accordance with 162(b)(1)[1] and is entitled to retired or retainer pay, section 5532 of title 5, United States Code, shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.

(4) VOLUNTARY SERVICES.—Notwithstanding any other provision of law, the Director may accept the voluntary services of individuals. While away from their homes or regular places of business on the business of the Corps, such individuals may be allowed travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent, as authorized under section 5703 of title 5, United States Code, for persons employed intermittently in Federal Government service.

[1] So in law. The term "section" should appear before "162(b)(1)".

SEC. 160. [42 U.S.C. 12620] STATUS OF CORPS MEMBERS AND CORPS PERSONNEL UNDER FEDERAL LAW.

(a) IN GENERAL.—Except as otherwise provided in this section, members of the National Civilian Community Corps shall not, by reason of their status as such members, be considered Federal employees or be subject to the provisions of law relating to Federal employment.

(b) WORK-RELATED INJURIES.—

(1) IN GENERAL.—For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, members of the Corps shall be considered as employees of the United States within the meaning of the term "employee", as defined in section 8101 of such title.

(2) SPECIAL RULE.—In the application of the provisions of subchapter I of chapter 81 of title 5, United States Code, to a person referred to in paragraph (1), the person shall not be considered to be in the performance of duty while absent from the person's assigned post of duty unless the absence is authorized in accordance with procedures prescribed by the Director.

(c) TORT CLAIMS PROCEDURE.—A member of the Corps shall be considered an employee of the United States for purposes of chapter 171 of title 28, United States Code, relating to tort claims liability and procedure.

SEC. 161. [42 U.S.C. 12621] CONTRACT AND GRANT AUTHORITY.

(a) PROGRAMS.—The Director may, by contract or grant, provide for any public or private organization to carry out the National Civilian Community Corps program.

(b) EQUIPMENT AND FACILITIES.—

(1) FEDERAL AND NATIONAL GUARD PROPERTY.—The Director shall enter into agreements, as necessary, with the Secretary of Defense, the Governor of a State, territory or commonwealth, or the commanding general of the District of Columbia National Guard, as the case may be, to utilize—

(A) equipment of the Department of Defense and equipment of the National Guard; and

(B) Department of Defense facilities and National Guard facilities identified pursuant to section 162(c).

(2) OTHER PROPERTY.—The Director may enter into contracts or agreements for the use of other equipment or facilities to the extent practicable to train and house members of the National Civilian Community Corps and leaders of Corps units.

SEC. 162. [42 U.S.C. 12622] RESPONSIBILITIES OF DEPARTMENT OF DEFENSE.

(a) LIAISON OFFICE.—

(1) ESTABLISHMENT.—Upon the establishment of the Program, the Secretary of Defense shall establish an office to provide for liaison between the Secretary and the National Civilian Community Corps.

(2) DUTIES.—The office shall—

(A) in order to assist in the recruitment of personnel for appointment in the permanent cadre, make available to

the Director information in the registry established by section 1143a of title 10, United States Code; and

(B) provide other assistance in the coordination of Department of Defense activities with the Corps.

(b) CORPS CADRE.—

(1) LIST OF RECOMMENDED PERSONNEL.—Upon the establishment of the Program, the Secretary of Defense, in consultation with the liaison office established under subsection (a) shall develop a list of individuals from which individuals may be selected for appointment by the Director in the permanent cadre of Corps personnel. Such personnel shall be selected from among members and former members of the Armed Forces referred to in section 151(3) who are commissioned officers, noncommissioned officers, former commissioned officers, or former noncommissioned officers.

(2) RECOMMENDATIONS REGARDING GRADE AND PAY.—The Secretary of Defense shall recommend to the Director an appropriate rate of pay for each person recommended for the cadre pursuant to this subsection.

(3) CONTRIBUTION FOR RETIRED MEMBER'S PAY.—If a listed individual receiving retired or retainer pay is appointed to a position in the cadre and the rate of pay for that individual is established at the amount equal to the difference between the active duty pay and allowances which that individual would receive if ordered to active duty and the amount of the individual's retired or retainer pay, the Secretary of Defense shall pay, by transfer to the Corporation from amounts available for pay of active duty members of the Armed Forces, the amount equal to 50 percent of that individual's rate of pay for service in the cadre.

(c) FACILITIES.—Upon the establishment of the Program, the Secretary of Defense shall identify military installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National Guard facilities that may be used, in whole or in part, by the National Civilian Community Corps for training or housing Corps members. The Secretary of Defense shall carry out this subsection in consultation with the liaison office established under subsection (a).

(d) INFORMATION REGARDING CORPS.—The Secretary of Defense may permit Armed Forces recruiters to inform potential applicants for the Corps regarding service in the Corps as an alternative to service in the Armed Forces.

SEC. 163. [42 U.S.C. 12623] ADVISORY BOARD.

(a) ESTABLISHMENT AND PURPOSE.—There shall be established a National Civilian Community Corps Advisory Board to advise the Director concerning the administration of this subtitle and to assist the Corps in responding rapidly and efficiently in times of natural and other disasters. The Advisory Board members shall help coordinate activities with the Corps as appropriate, including the mobilization of volunteers and coordination of volunteer centers to help local communities recover from the effects of natural and other disasters.

(b) MEMBERSHIP.—The Advisory Board shall be composed of the following members:

(1) The Secretary of Labor.

(2) The Secretary of Defense.

(3) The Secretary of the Interior.

(4) The Secretary of Agriculture.

(5) The Secretary of Education.

(6) The Secretary of Housing and Urban Development.

(7) The Chief of the National Guard Bureau.

(8) The Administrator of the Federal Emergency Management Agency.

(9) The Secretary of Transportation.

(10) The Chief of the Forest Service.

(11) The Administrator of the Environmental Protection Agency.

(12) The Secretary of Energy.

(13) Individuals appointed by the Director from among persons who are broadly representative of educational institutions, voluntary organizations, public and private organizations, youth, and labor unions.

(14) The Chief Executive Officer.

(c) INAPPLICABILITY OF TERMINATION REQUIREMENT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

SEC. 164. [42 U.S.C. 12624] EVALUATIONS.

Pursuant to the provisions for evaluations conducted under section 179, and in particular subsection (g) of such section, the Corporation shall conduct periodic evaluations of the National Civilian Community Corps Program authorized under this subtitle. Upon completing each such evaluation, the Corporation shall transmit to the authorizing committees a report on the evaluation.

SEC. 165. [42 U.S.C. 12626] DEFINITIONS.

In this subtitle:

(1) BOARD.—The term "Board" means the Board of Directors of the Corporation.

(2) CAMPUS DIRECTOR.—The term "campus director", with respect to a Corps campus, means the head of the campus under section 155(d).

(3) CORPS.—The term "Corps" means the National Civilian Community Corps required under section 155 as part of the National Civilian Community Corps Program.

(4) CORPS CAMPUS.—The term "Corps campus" means the facility or central location established as the operational headquarters and boarding place for particular Corps units.

(5) CORPS MEMBERS.—The term "Corps members" means persons receiving training and participating in projects under the National Civilian Community Corps Program.

(6) DIRECTOR.—The term "Director" means the Director of the National Civilian Community Corps.

(7) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given that term in section 101 of the Higher Education Act of 1965.

(8) PROGRAM.—The term "Program" means the National Civilian Community Corps Program[1] established pursuant to section 152.

(9) SERVICE-LEARNING.—The term "service-learning", with respect to Corps members, means a method—

(A) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs;

(B) that provides structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity;

(C) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities; and

(D) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

(10) UNIT.—The term "unit" means a unit of the Corps referred to in section 155(c).

Subtitle F—Administrative Provisions

SEC. 171. [42 U.S.C. 12631] FAMILY AND MEDICAL LEAVE.

(a) PARTICIPANTS IN PRIVATE, STATE, AND LOCAL PROJECTS.—For purposes of title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), if—

(1) a participant has provided service for the period required by section 101(2)(A)(i) (29 U.S.C. 2611(2)(A)(i)), and has met the hours of service requirement of section 101(2)(A)(ii), of such Act with respect to a project authorized under the national service laws; and

(2) the service sponsor of the project is an employer described in section 101(4) of such Act (other than an employing agency within the meaning of subchapter V of chapter 63 of title 5, United States Code),

the participant shall be considered to be an eligible employee of the service sponsor.

(b) PARTICIPANTS IN FEDERAL PROJECTS.—For purposes of subchapter V of chapter 63 of title 5, United States Code, if—

(1) a participant has provided service for the period required by section 6381(1)(B) of such title with respect to a project; and

(2) the service sponsor of the project is an employing agency within the meaning of such subchapter,

the participant shall be considered to be an employee of the service sponsor.

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[1] Section 1516(2)(F) of Public Law 111–13 provides for an amendment to paragraph (8) as follows:

> (F) in paragraph (8) (as so redesignated), by striking "The terms" and all that follows through "Demonstration Program" and inserting "The term 'Program' means the National Civilian Community Corps Program"; and

The amendment probably should have included the phrase "the second place such term appears" after "and all that follows through 'Demonstration Program'". Such amendment was executed through the second occurrence of "Demonstration Program" in order to reflect the probable intent of Congress.

(c) TREATMENT OF ABSENCE.—The period of any absence of a participant from a service position pursuant to title I of the Family and Medical Leave Act of 1993 or subchapter V of chapter 63 of title 5, United States Code, shall not be counted toward the completion of the term of service of the participant under section 139 of this Act.

SEC. 172. [42 U.S.C. 12632] REPORTS.

(a) STATE REPORTS.—

(1) IN GENERAL.—Each State receiving assistance under this title shall prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this title and the status of the national and community service programs that receive assistance under such title in such State.

(2) LOCAL GRANTEES.—Each State may require local grantees that receive assistance under this title to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (1), 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.

(3) REPORT DEMONSTRATING COMPLIANCE.—

(A) IN GENERAL.—Each State receiving assistance under this title shall include information in the report required under paragraph (1) that demonstrates the compliance of the State with the provisions of this Act, including section 177.

(B) LOCAL GRANTEES.—Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (1).

(4) AVAILABILITY OF REPORT.—Reports submitted under paragraph (1) shall be made available to the public on request.

(b) REPORT TO CONGRESS BY CORPORATION

(1) IN GENERAL.—Not later than 120 days after the end of each fiscal year, the Corporation shall prepare and submit, to the authorizing committees, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate[1], a report concerning the programs that receive assistance under the national service laws.

(2) CONTENT.—Reports submitted under paragraph (1) shall contain a summary of the information contained in the State reports submitted under subsection (a), and shall reflect the findings and actions taken as a result of any evaluation conducted by the Corporation.

(c) REPORT TO CONGRESS BY SECRETARY OF DEFENSE.—

[1] Section 1602(1) of Public Law 111–13 amends subsection (b)(1) by striking "appropriate authorizing and appropriations Committees of Congress" and inserting "authorizing committees, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate". Such amendment should have struck appropriate authorizing and appropriation Committees of Congress" which was executed above to reflect the probable intent of Congress.

(1) STUDY.—The Secretary of Defense shall annually conduct a study of the effect of the programs carried out under this title on recruitment for the Armed Forces.

(2) REPORT.—The Secretary of Defense shall annually submit a report to the authorizing committees, the Committee on Armed Services of the House of Representatives, and the Committee on Armed Services of the Senate containing the findings of the study described in paragraph (1) and such recommendations for legislative and administrative reform as the Secretary may determine to be appropriate.

SEC. 173. [42 U.S.C. 12633] SUPPLEMENTATION.

(a) IN GENERAL.—Assistance provided under this title shall be used to supplement the level of State and local public funds expended for services of the type assisted under this title in the previous fiscal year.

(b) AGGREGATE EXPENDITURE.—Subsection (a) shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this title.

SEC. 174. [42 U.S.C. 12634] PROHIBITION ON USE OF FUNDS.

(a) PROHIBITED USES.—No assistance made available under a grant under this title shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) POLITICAL ACTIVITY.—Assistance provided under this title shall not be used by program participants and program staff to—

(1) assist, promote, or deter union organizing; or

(2) finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) CONTRACTS OR COLLECTIVE BARGAINING AGREEMENTS.—A program that receives assistance under this title shall not impair existing contracts for services or collective bargaining agreements.

(d) REFERRALS FOR FEDERAL ASSISTANCE.—A program may not receive assistance under the national service laws for the sole purpose of referring individuals to Federal assistance programs or State assistance programs funded in part by the Federal Government.

SEC. 175. [42 U.S.C. 12635] NONDISCRIMINATION.

(a) IN GENERAL.—

(1) BASIS.—An individual with responsibility for the operation of a project that receives assistance under this title shall 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.

(2) DEFINITION.—As used in paragraph (1), 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)).

(b) FEDERAL FINANCIAL ASSISTANCE.—Any assistance provided under this title shall constitute 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 shall constitute 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) RELIGIOUS DISCRIMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this title shall 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 funds received under this title.

(2) EXCEPTION.—Paragraph (1) shall not apply to the employment, with assistance provided under this title, of any member of the staff, of a project that receives assistance under this title, who was employed with the organization operating the project on the date the grant under this title was awarded.

(d) RULES AND REGULATIONS.—The Chief Executive Officer shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

SEC. 176. [42 U.S.C. 12636] NOTICE, HEARING, AND GRIEVANCE PROCEDURES.

(a) IN GENERAL.—

(1) SUSPENSION OF PAYMENTS.—The Corporation may in accordance with the provisions of this title, suspend or terminate payments under a contract or grant providing assistance under this title, or revoke the designation of positions, related to the grant or contract, as approved national service positions, whenever the Corporation determines there is a material failure to comply with this title or the applicable terms and conditions of any such grant or contract issued pursuant to this title.

(2) PROCEDURES TO ENSURE ASSISTANCE.—The Corporation shall prescribe procedures to ensure that—

(A) assistance provided under this title shall not be suspended for failure to comply with the applicable terms and conditions of this title except, in emergency situations, a suspension may be granted for 1 or more periods of 30 days not to exceed a total of 90 days; and

(B) assistance provided under this title shall not be terminated or revoked for failure to comply with applicable terms and conditions of this title unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) HEARINGS.—Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this title.

(c) TRANSCRIPT OR RECORDING.—A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) STATE LEGISLATION.—Nothing in this title shall be construed to preclude the enactment of State legislation providing for the implementation, consistent with this title, of the programs administered under this title.

(e) CONSTRUCTION.—Nothing in this title shall be construed to link performance of service with receipt of Federal student financial assistance, other than assistance provided pursuant to this Act.

(f) GRIEVANCE PROCEDURE.—

(1) IN GENERAL.—An entity that receives assistance under this title shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning projects that receive assistance under this title, including grievances regarding proposed placements of such participants in such projects.

(2) DEADLINE FOR GRIEVANCES.—Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

(3) DEADLINE FOR HEARING AND DECISION.—

(A) HEARING.—A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of such grievance.

(B) DECISION.—A decision on any such grievance shall be made not later than 60 days after the filing of such grievance.

(4) ARBITRATION.—

(A) IN GENERAL.—

(i) JOINTLY SELECTED ARBITRATOR.—In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) APPOINTED ARBITRATOR.—If the parties cannot agree on an arbitrator, the Chief Executive Officer shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

(B) DEADLINE FOR PROCEEDING.—An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

(C) DEADLINE FOR DECISION.—A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

(D) COST.—

(i) IN GENERAL.—Except as provided in clause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

(ii) EXCEPTION.—If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

(5) PROPOSED PLACEMENT.—If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this title, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

(6) REMEDIES.—Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this title;

(B) termination of such payments;

(C) prohibition of the placement described in paragraph (5);

(D) in a case in which the grievance is filed by an individual applicant or participant—

(i) the applicant's selection or the participant's reinstatement, as the case may be; and

(ii) other changes in the terms and conditions of service applicable to the individual; and

(E) in a case in which the grievance involves a violation of subsection (a) or (b) of section 177 and the employer of the displaced employee is the recipient of assistance under this title—

(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

(ii) payment of lost wages and benefits of the displaced employee;

(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 177 or to make the displaced employee whole.

(7) ENFORCEMENT.—Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

SEC. 177. [42 U.S.C. 12637] NONDUPLICATION AND NONDISPLACEMENT.

(a) NONDUPLICATION.—

(1) IN GENERAL.—Assistance provided under the national service laws shall be used only for a program that does not du-

plicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) PRIVATE NONPROFIT ENTITY.—Assistance made available under the national service laws shall 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 that such entity resides in, unless the requirements of subsection (b) are met.

(b) NONDISPLACEMENT.—

(1) IN GENERAL.—An employer shall not displace an employee, position, or volunteer (other than a participant under the national service laws), 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 assistance under the national service laws.

(2) SERVICE OPPORTUNITIES.—A service opportunity shall not be created under the national service laws that will infringe in any manner on the promotional opportunity of an employed individual.

(3) LIMITATION ON SERVICES.—

(A) DUPLICATION OF SERVICES.—A participant in a program receiving assistance under the national service laws shall 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.

(B) SUPPLANTATION OF HIRING.—A participant in any program receiving assistance under the national service laws shall 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.

(C) DUTIES FORMERLY PERFORMED BY ANOTHER EMPLOYEE.—A participant in any program receiving assistance under the national service laws shall 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—

(I) is subject to a reduction in force; or

(II) 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.

(c) LABOR MARKET INFORMATION.—The Secretary of Labor shall make available to the Corporation and to any program agency

under this title such labor market information as is appropriate for use in carrying out the purposes of this title.

(d) TREATMENT OF BENEFITS.—Allowances, earnings, and payments to individuals participating in programs that receive assistance under this title shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

(e) STANDARDS OF CONDUCT.—Programs that receive assistance under this title shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

(f) PARENTAL INVOLVEMENT.—

(1) IN GENERAL.—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.

(2) PARENTAL PERMISSION.—Programs that receive assistance under the national service laws shall, before transporting minor children, provide the children's parents with the reason for the transportation and obtain the parents' written permission for such transportation, consistent with State law.

SEC. 178. [42 U.S.C. 12638] STATE COMMISSIONS ON NATIONAL AND COMMUNITY SERVICE.

(a) EXISTENCE REQUIRED.—

(1) STATE COMMISSION.—Except as provided in paragraph (2), to be eligible to receive a grant or allotment under subtitle B or C or to receive a distribution of approved national service positions under subtitle C, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

(2) ALTERNATIVE ADMINISTRATIVE ENTITY.—The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this Act. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under section 130.

(b) APPOINTMENT AND SIZE.—Except as provided in subsection (c)(3), the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio nonvoting members, as described in paragraph (3) or (4) of subsection (c).

(c) COMPOSITION AND MEMBERSHIP.—

(1) REQUIRED MEMBERS.—The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in subsection (a), (b), or (c) of section 122.

(J) A representative of the volunteer sector.

(2) SOURCES OF OTHER MEMBERS.—The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(3) CORPORATION REPRESENTATIVE.—The representative of the Corporation designated under section 195(c) for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State.

(4) EX OFFICIO STATE REPRESENTATIVES.—The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

(5) LIMITATION ON NUMBER OF STATE EMPLOYEES AS MEMBERS.—The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

(d) MISCELLANEOUS MATTERS.—

(1) MEMBERSHIP BALANCE.—The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the voting members of a State Commission, plus one additional member, may be from the same political party.

(2) TERMS.—Each member of the State Commission for a State shall serve for a term of 3 years, except that the chief executive officer of a State shall initially appoint a portion of the members to terms of 1 year and 2 years.

(3) VACANCIES.—If a vacancy occurs on a State Commission, a new member shall be appointed by the chief executive officer of the State and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the State Commission.

(4) COMPENSATION.—A member of a State Commission or alternative administrative entity shall not receive any additional compensation by reason of service on the State Commission or alternative administrative entity, except that the State may authorize the reimbursement of travel expenses, including a per diem in lieu of subsistence, in the same manner as other employees serving intermittently in the service of the State.

(5) CHAIRPERSON.—The voting members of a State Commission shall elect one of the voting members to serve as chairperson of the State Commission.

(6) LIMITATION ON MEMBER PARTICIPATION.—

(A) GENERAL LIMITATION.—Except as provided in subparagraph (B), a voting member of the State Commission (or of an alternative administrative entity) shall not participate in the administration of the grant program (including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity) described in subsection (e)(9) if—

(i) a grant application relating to such program is pending before the Commission (or such entity); and

(ii) the application was submitted by a program or entity of which such member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(B) EXCEPTION.—If, as a result of the operation of subparagraph (A), the number of voting members of the Commission (or of such entity) is insufficient to establish a quorum for the purpose of administering such program, then voting members excluded from participation by subparagraph (A) may participate in the administration of such program, notwithstanding the limitation in subparagraph (A), to the extent permitted by regulations issued under section 193A(b)(12) by the Corporation.

(C) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed to limit the authority of any voting member of the Commission (or of such entity) to participate in—

(i) discussion of, and hearing and forums on—

(I) the general duties, policies, and operations of the Commission (or of such entity); or

(II) the general administration of such program; or

(ii) similar general matters relating to the Commission (or such entity).

(e) DUTIES OF A STATE COMMISSION.—The State Commission or alternative administrative entity for a State shall be responsible for the following duties:

(1) Preparation of a national service plan for the State that—

(A) is developed, through an open and public process (such as through regional forums, hearings, and other means) that provides for maximum participation and input from the private sector, organizations, and public agencies, using service and volunteerism as strategies to meet critical community needs, including service through programs funded under the national service laws;

(B) covers a 3-year period, the beginning of which may be set by the State;

(C) is subject to approval by the chief executive officer of the State;

(D) includes measurable goals and outcomes for the State national service programs in the State consistent with the performance levels for national service programs as described in section 179(k);

(E) ensures outreach to diverse community-based agencies that serve underrepresented populations, through established networks and registries at the State level, or through the development of such networks and registries;

(F) provides for effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws;

(G) is updated annually, reflecting changes in practices and policies that will improve the coordination and effectiveness of Federal, State, and local resources for service and volunteerism within the State;

(H) ensures outreach to, and coordination with, municipalities (including large cities) and county governments regarding the national service laws; and

(I) contains such information as the State Commission considers to be appropriate or as the Corporation may require.

(2) Preparation of the applications of the State under section 130 for financial assistance.

(3) Assistance in the preparation of the application of the State educational agency for assistance under section 113.

(4) Preparation of the application of the State under section 130 for the approval of service positions that include the national service educational award described in subtitle D.

(5) Make recommendations to the Corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(6) Make technical assistance available to enable applicants for assistance under section 121—

(A) to plan and implement service programs; and

(B) to apply for assistance under the national service laws using, if appropriate, information and materials

available through a clearinghouse established under section 198A.

(7) Assistance in the provision of health care and child care benefits under section 140 to participants in national service programs that receive assistance under section 121.

(8) Development of a State system for the recruitment and placement of participants in programs that receive assistance under the national service laws and dissemination of information concerning national service programs that receive such assistance or approved national service positions.

(9) Administration of the grant program in support of national service programs that is conducted by the State using assistance provided to the State under section 121, including selection, oversight, and evaluation of grant recipients.

(10) Development of projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the Corporation (to be made available in a case in which such a program requests such a project, method, material, or activity) or from the State using assistance provided under section 121, for use by programs that request such projects, methods, materials, and activities.

(f) RELIEF FROM ADMINISTRATIVE REQUIREMENTS.—Upon approval of a State plan submitted under subsection (e)(1), the Chief Executive Officer may waive for the State, or specify alternatives for the State to, administrative requirements (other than statutory provisions) otherwise applicable to grants made to States under the national service laws, including those requirements identified by the State as impeding the coordination and effectiveness of Federal, State, and local resources for service and volunteerism within the State.

(g) STATE SERVICE PLAN FOR ADULTS AGE 55 OR OLDER.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, to be eligible to receive a grant or allotment under subtitle B or C or to receive a distribution of approved national service positions under subtitle C, a State shall work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older.

(2) MATTERS INCLUDED.—The State service plan shall include—

(A) 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;

(B) recommendations to the State agency (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)) on—

(i) a marketing outreach plan to businesses; and

(ii) outreach to—

(I) nonprofit organizations;

(II) the State educational agency;

(III) institutions of higher education; and

(IV) other State agencies;

(C) recommendations for civic engagement and multigenerational activities, such as—

(i) early childhood education and care, family literacy, and after school programs;

(ii) respite services for adults age 55 or older and caregivers; and

(iii) transitions for older adults age 55 or older to purposeful work in their post-career lives; and

(D) recommendations for encouraging the development of Encore service programs in the State.

(3) KNOWLEDGE BASE.—The State service plan shall incorporate the current knowledge base (as of the time of the plan) regarding—

(A) the economic impact of the roles of workers age 55 or older in the economy;

(B) the social impact of the roles of such workers in the community; and

(C) the health and social benefits of active engagement for adults age 55 or older.

(4) PUBLICATION.—The State service plan shall be made available to the public and be transmitted to the Chief Executive Officer.

(h) ACTIVITY INELIGIBLE FOR ASSISTANCE.—A State Commission or alternative administrative entity may not directly carry out any national service program that receives assistance under section 121.

(i) DELEGATION.—Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties to a State agency or public or private nonprofit organization.

(j) APPROVAL OF STATE COMMISSION OR ALTERNATIVE.—

(1) SUBMISSION TO CORPORATION.—The chief executive officer for a State shall notify the Corporation of the establishment or designation of the State Commission or use of an alternative administrative entity for the State. The notification shall include a description of—

(A) the composition and membership of the State Commission or alternative administrative entity; and

(B) the authority of the State Commission or alternative administrative entity regarding national service activities carried out by the State.

(2) APPROVAL OF ALTERNATIVE ADMINISTRATIVE ENTITY.—Any designation of a State Commission or use of an alternative administrative entity to carry out the duties of a State Commission shall be subject to the approval of the Corporation, which shall not be unreasonably withheld. The Corporation shall approve an alternative administrative entity if such entity provides for individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the duties described in paragraphs (1) through (4) of subsection (e).

(3) REJECTION.—The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements of this section. The Corporation may reject a request to use an alternative administrative entity in lieu of a State Commission if the Corporation determines that the entity does not provide for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) to play a significant policymaking role as described in paragraph (2). If the Corporation rejects a State Commission or alternative administrative entity under this paragraph, the Corporation shall promptly notify the State of the reasons for the rejection.

(4) RESUBMISSION AND RECONSIDERATION.—The Corporation shall provide a State notified under paragraph (3) with a reasonable opportunity to revise the rejected State Commission or alternative administrative entity. At the request of the State, the Corporation shall provide technical assistance to the State as part of the revision process. The Corporation shall promptly reconsider any resubmission of a notification under paragraph (1) or application to use an alternative administrative entity under paragraph (2).

(5) SUBSEQUENT CHANGES.—This subsection shall also apply to any change in the composition or duties of a State Commission or an alternative administrative entity made after approval of the State Commission or the alternative administrative entity.

(6) RIGHTS.—An alternative administrative entity approved by the Corporation under this subsection shall have the same rights as a State Commission.

(k) COORDINATION.—

(1) COORDINATION WITH OTHER STATE AGENCIES.—The State Commission or alternative administrative entity for a State shall coordinate the activities of the Commission or entity under this Act 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.—

(A) IN GENERAL.—The State Commission or alternative administrative entity for a State shall coordinate functions of the Commission or entity (including recruitment, public awareness, and training activities) with such functions of any division of the Corporation, that carries out volunteer service programs in the State.

(B) AGREEMENT.—In coordinating functions under this paragraph, such Commission or entity, and such division, may enter into an agreement to—

(i) carry out such a function jointly;

(ii) to assign responsibility for such a function to the Commission or entity; or

(iii) to assign responsibility for such a function to the division.

(C) INFORMATION.—The State Commission or alternative entity for a State, and the head of any such division, shall exchange information about—

(i) the programs carried out in the State by the Commission, entity, or division, as appropriate; and

(ii) opportunities to coordinate activities.

(l) LIABILITY.—

(1) LIABILITY OF STATE.—Except as provided in paragraph (2)(B), a State shall 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 alternative administrative entity of the State, within the scope of the service of the member on the State Commission or alternative administrative entity.

(2) OTHER CLAIMS.—

(A) IN GENERAL.—A member of the State Commission or alternative administrative entity shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the State Commission or alternative administrative entity.

(B) LIMITATION.—This paragraph shall not be construed to 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 such member on the State Commission or alternative administrative entity.

(3) EFFECT ON OTHER LAW.—This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such service;

(B) to affect any other right or remedy against the State under applicable law, or against any person other than a member of the State Commission or alternative administrative entity; or

(C) to limit or alter in any way the immunities that are available under applicable law for State officials and employees not described in this subsection.

SEC. 179. [42 U.S.C. 12639] EVALUATION.

(a) IN GENERAL.—The Corporation shall provide, directly or through grants or contracts, for the continuing evaluation of programs that receive assistance under the national service laws, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of programs receiving assistance under the national service laws in achieving stated goals and the costs associated with such programs, including an evaluation of each such program's performance based on the performance levels established under subsection (k); and

(2) the effectiveness of the structure and mechanisms for delivery of services, such as the effective utilization of the participants' time, the management of the participants, and the

ease with which recipients were able to receive services, to maximize the cost effectiveness and the impact of such programs.

(b) COMPARISONS.—The Corporation shall provide for inclusion in the evaluations required under subsection (a), where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

(c) CONDUCTING EVALUATIONS.—Evaluations of programs under subsection (a) shall be conducted by individuals who are not directly involved in the administration of such program.

(d) STANDARDS.—The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

(e) COMMUNITY PARTICIPATION.—In evaluating a program receiving assistance under the national service laws, the Corporation shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

(f) COMPARISON OF PROGRAM MODELS.—The Corporation shall evaluate and compare the effectiveness of different program models in meeting the program objectives described in subsection (g) including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative voucher or post-service benefit options, and programs utilizing individual placements and teams.

(g) PROGRAM OBJECTIVES.—The Corporation shall ensure that programs that receive assistance under subtitle C are evaluated to determine their effectiveness in—

(1) recruiting and enrolling diverse participants in such programs, consistent with the requirements of section 145, based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) promoting the educational achievement of each participant in such programs, based on earning a high school diploma or the equivalent of such diploma and the future enrollment and completion of increasingly higher levels of education;

(3) encouraging each participant to engage in public and community service after completion of the program based on career choices and service in other service programs such as the Volunteers in Service to America Program and National Senior Service Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), the military, and part-time volunteer service;

(4) promoting of positive attitudes among each participant regarding the role of such participant in solving community problems based on the view of such participant regarding the personal capacity of such participant to improve the lives of others, the responsibilities of such participant as a citizen and community member, and other factors;

(5) enabling each participant to finance a lesser portion of the higher education of such participant through student loans;

(6) providing services and projects that benefit the community;

(7) supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can effectively be utilized;

(8) 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 or impair the existing contracts of such workers; and

(9) attracting a greater number of citizens to engage in service that benefits the community.

(h) OBTAINING INFORMATION.—

(1) IN GENERAL.—In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary to carry out the requirements of this section.

(2) CONFIDENTIALITY.—

(A) IN GENERAL.—The Corporation shall maintain the confidentiality of information acquired under this subsection regarding individual participants.

(B) DISCLOSURE.—

(i) CONSENT.—The content of any information described in subparagraph (A) may be disclosed with the prior written consent of the individual participant with respect to whom the information is maintained.

(ii) AGGREGATE INFORMATION.—The Corporation may disclose information about the aggregate characteristics of such participants.

(i) INDEPENDENT EVALUATION AND REPORT OF DEMOGRAPHICS OF NATIONAL SERVICE PARTICIPANTS AND COMMUNITIES.—

(1) INDEPENDENT EVALUATION.—

(A) IN GENERAL.—The Corporation shall, on an annual basis, arrange for an independent evaluation of the programs assisted under subtitle C.

(B) PARTICIPANTS.—

(i) IN GENERAL.—The entity conducting such evaluation shall determine the demographic characteristics of the participants in such programs.

(ii) CHARACTERISTICS.—The entity shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(iii) CATEGORIES.—The Corporation shall determine appropriate categories for analysis of each of the characteristics referred to in clause (ii) for purposes of such an evaluation.

(C) COMMUNITIES.—In conducting the evaluation, the entity shall determine the amount of assistance provided under section 121 during the year that has been expended

for projects conducted under the programs in areas described in section 133(c)(6).

(2) REPORT.—The entity conducting the evaluation shall submit a report to the President, the authorizing committees, the Corporation, and each State Commission containing the results of the evaluation—

(A) with respect to the evaluation covering the year beginning on the date of enactment of this subsection, not later than 18 months after such date; and

(B) with respect to the evaluation covering each subsequent year, not later than 18 months after the first day of each such year.

(j) RESERVED PROGRAM FUNDS FOR ACCOUNTABILITY.—Notwithstanding any other provision of law, in addition to amounts appropriated to carry out this section, the Corporation may reserve not more than 1 percent of the total funds appropriated for a fiscal year under section 501 of this Act and sections 501 and 502 of the Domestic Volunteer Service Act of 1973 to support program accountability activities under this section.

(k) PERFORMANCE LEVELS.—The Corporation shall, in consultation with each recipient of assistance under the national service laws, establish performance levels for such recipient to meet during the term of the assistance. The performance levels may include, for each national service program carried out by the recipient, performance levels based on the following performance measures:

(1) Number of participants enrolled in the program and completing terms of service, as compared to the stated participation and retention goals of the program.

(2) Number of volunteers recruited from the community in which the program was implemented.

(3) If applicable based on the program design, the number of individuals receiving or benefitting from the service conducted.

(4) Number of disadvantaged and underrepresented youth participants.

(5) Measures of the sustainability of the program and the projects supported by the program, including measures to ascertain the level of community support for the program or projects.

(6) Measures to ascertain the change in attitude toward civic engagement among the participants and the beneficiaries of the service.

(7) Other quantitative and qualitative measures as determined to be appropriate by the recipient of assistance and the Corporation.

(l) CORRECTIVE ACTION PLANS.—

(1) IN GENERAL.—A recipient of assistance under the national service laws that fails, as determined by the Corporation, to meet or exceed the performance levels agreed upon under subsection (k) for a national service program, shall reach an agreement with the Corporation on a corrective action plan to meet such performance levels.

(2) ASSISTANCE.—

(A) NEW PROGRAM.—For a program that has received assistance under the national service laws for less than 3 years and for which the recipient is failing to meet or exceed the performance levels agreed upon under subsection (k), the Corporation shall—

(i) provide technical assistance to the recipient to address targeted performance problems relating to the performance levels for the program; and

(ii) require the recipient to submit quarterly reports on the program's progress toward meeting the performance levels for the program to the—

(I) appropriate State, territory, or Indian tribe; and

(II) the Corporation.

(B) ESTABLISHED PROGRAMS.—For a program that has received assistance under the national service laws for 3 years or more and for which the recipient is failing to meet or exceed the performance levels agreed upon under subsection (k), the Corporation shall require the recipient to submit quarterly reports on the program's progress toward the performance levels for the program to—

(i) the appropriate State, territory, or Indian tribe; and

(ii) the Corporation.

(m) FAILURE TO MEET PERFORMANCE LEVELS.—If, after a period for correction as approved by the Corporation in accordance with subsection (l), a recipient of assistance under the national service laws fails to meet or exceed the performance levels for a national service program, the Corporation shall—

(1) reduce the annual amount of the assistance received by the underperforming recipient by at least 25 percent, for each remaining year of the grant period for that program; or

(2) terminate assistance to the underperforming recipient for that program, in accordance with section 176(a).

(n) REPORTS.—The Corporation shall submit to the authorizing committees not later than 2 years after the date of enactment of the Serve America Act, and annually thereafter, a report containing information on the number of—

(1) recipients of assistance under the national service laws implementing corrective action plans under subsection (l)(1);

(2) recipients for which the Corporation provides technical assistance for a program under subsection (l)(2)(A)(i);

(3) recipients for which the Corporation terminates assistance for a program under subsection (m);

(4) entities whose application for assistance under a national service law was rejected; and

(5) recipients meeting or exceeding their performance levels under subsection (k).

SEC. 179A. [42 U.S.C. 12639a] CIVIC HEALTH ASSESSMENT AND VOLUNTEERING RESEARCH AND EVALUATION.

(a) DEFINITION OF PARTNERSHIP.—In this section, the term "partnership" means the Corporation, acting in conjunction with (consistent with the terms of an agreement entered into between the Corporation and the National Conference) the National Con-

ference on Citizenship referred to in section 150701 of title 36, United States Code, to carry out this section.

(b) IN GENERAL.—The partnership shall facilitate the establishment of a Civic Health Assessment by—

(1) after identifying public and private sources of civic health data, selecting a set of civic health indicators, in accordance with subsection (c), that shall comprise the Civic Health Assessment;

(2) obtaining civic health data relating to the Civic Health Assessment, in accordance with subsection (d); and

(3) conducting related analyses, and reporting the data and analyses, as described in paragraphs (4) and (5) of subsection (d) and subsections (e) and (f).

(c) SELECTION OF INDICATORS FOR CIVIC HEALTH ASSESSMENT.—

(1) IDENTIFYING SOURCES.—The partnership shall select a set of civic health indicators that shall comprise the Civic Health Assessment. In making such selection, the partnership—

(A) shall identify public and private sources of civic health data;

(B) shall explore collaborating with other similar efforts to develop national indicators in the civic health domain; and

(C) may sponsor a panel of experts, such as one convened by the National Academy of Sciences, to recommend civic health indicators and data sources for the Civic Health Assessment.

(2) TECHNICAL ADVICE.—At the request of the partnership, the Director of the Bureau of the Census and the Commissioner of Labor Statistics shall provide technical advice to the partnership on the selection of the indicators for the Civic Health Assessment.

(3) UPDATES.—The partnership shall periodically evaluate and update the Civic Health Assessment, and may expand or modify the indicators described in subsection (d)(1) as necessary to carry out the purposes of this section.

(d) DATA ON THE INDICATORS.—

(1) SPONSORED DATA COLLECTION.—In identifying the civic health indicators for the Civic Health Assessment, and obtaining data for the Assessment, the partnership may sponsor the collection of data for the Assessment or for the various civic health indicators being considered for inclusion in the Assessment, including indicators related to—

(A) volunteering and community service;

(B) voting and other forms of political and civic engagement;

(C) charitable giving;

(D) connecting to civic groups and faith-based organizations;

(E) interest in employment, and careers, in public service in the nonprofit sector or government;

(F) understanding and obtaining knowledge of United States history and government; and

(G) social enterprise and innovation.

(2) DATA FROM STATISTICAL AGENCIES.—The Director of the Bureau of the Census and the Commissioner of Labor Statistics shall collect annually, to the extent practicable, data to inform the Civic Health Assessment, and shall report data from such collection to the partnership. In determining the data to be collected, the Director and the Commissioner shall examine privacy issues, response rates, and other relevant issues.

(3) SOURCES OF DATA.—To obtain data for the Civic Health Assessment, the partnership shall consider—

(A) data collected through public and private sources; and

(B) data collected by the Bureau of the Census, through the Current Population Survey, or by the Bureau of Labor Statistics, in accordance with paragraph (2).

(4) DEMOGRAPHIC CHARACTERISTICS.—The partnership shall seek to obtain data for the Civic Health Assessment that will permit the partnership to analyze the data by age group, race and ethnicity, education level, and other demographic characteristics of the individuals involved.

(5) OTHER ISSUES.—In obtaining data for the Civic Health Assessment, the partnership may also obtain such information as may be necessary to analyze—

(A) the role of Internet technology in strengthening and inhibiting civic activities;

(B) the role of specific programs in strengthening civic activities;

(C) the civic attitudes and activities of new citizens and immigrants; and

(D) other areas related to civic activities.

(e) REPORTING OF DATA.—

(1) IN GENERAL.—The partnership shall, not less often than once each year, prepare a report containing—

(A) detailed data obtained under subsection (d), including data on the indicators comprising the Civic Health Assessment; and

(B) the analyses described in paragraphs (4) and (5) of subsection (d), to the extent practicable based on the data the partnership is able to obtain.

(2) AGGREGATION AND PRESENTATION.—The partnership shall, to the extent practicable, aggregate the data on the civic health indicators comprising the Civic Health Assessment by community, by State, and nationally. The report described in paragraph (1) shall present the aggregated data in a form that enables communities and States to assess their civic health, as measured on each of the indicators comprising the Civic Health Assessment, and compare those measures with comparable measures of other communities and States.

(3) SUBMISSION.—The partnership shall submit the report to the authorizing committees, and make the report available to the general public on the Corporation's website.

(f) PUBLIC INPUT.—The partnership shall—

(1) identify opportunities for public dialogue and input on the Civic Health Assessment; and

(2) hold conferences and forums to discuss the implications of the data and analyses reported under subsection (e).

(g) VOLUNTEERING RESEARCH AND EVALUATION.—

(1) RESEARCH.—The partnership shall provide for baseline research and tracking of domestic and international volunteering, and baseline research and tracking related to relevant data on the indicators described in subsection (d). In providing for the research and tracking under this subsection, the partnership shall consider data from the Supplements to the Current Populations Surveys conducted by the Bureau of the Census for the Bureau of Labor Statistics, and data from other public and private sources, including other data collected by the Bureau of the Census and the Bureau of Labor Statistics.

(2) IMPACT RESEARCH AND EVALUATION.—The partnership shall sponsor an independent evaluation of the impact of domestic and international volunteering, including an assessment of best practices for such volunteering, and methods of improving such volunteering through enhanced collaboration among—

(A) entities that recruit, manage, support, and utilize volunteers;

(B) institutions of higher education; and

(C) research institutions.

(h) DATABASE PROHIBITION.—Nothing in this Act shall be construed to authorize the development, implementation, or maintenance of a Federal database of personally identifiable information on individuals participating in data collection for sources of information under this section.

SEC. 180. [42 U.S.C. 12640] ENGAGEMENT OF PARTICIPANTS.

A State shall not engage a participant to serve in any program that receives assistance under this title unless and until amounts have been appropriated under section 501 for the provision of national service educational awards and for the payment of other necessary expenses and costs associated with such participant.

SEC. 181. [42 U.S.C. 12641] CONTINGENT EXTENSION.

Section 422 of the General Education Provisions Act (20 U.S.C. 1226a) shall apply to this Act.

SEC. 182. [42 U.S.C. 12642] PARTNERSHIPS WITH SCHOOLS.

(a) DESIGN OF PROGRAMS.—The head of each Federal agency and department shall design and implement a comprehensive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include—

(1) a review of existing programs to identify and expand the opportunities for such employees to be adult volunteers in schools and for students and out-of-school youth;

(2) the designation of a senior official in each such agency and department who will be responsible for establishing partnership and youth service programs in each such agency and department and for developing partnership and youth service programs;

(3) the encouragement of employees of such agencies and departments to participate in partnership programs and other service projects;

(4) the annual recognition of outstanding service programs operated by Federal agencies; and

(5) the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

(b) REPORT.—

(1) FEDERAL AGENCY SUBMISSION.—The head of each Federal agency and department shall prepare and submit to the Corporation a report concerning the implementation of this section, including an evaluation of the agency or department's performance on performance goals and benchmarks for each partnership program of the agency or department.

(2) REPORT TO CONGRESS.—The Corporation shall prepare and submit to the authorizing committees a compilation of the information received under paragraph (1).

SEC. 183. [42 U.S.C. 12643] RIGHTS OF ACCESS, EXAMINATION, AND COPYING.

(a) COMPTROLLER GENERAL.—Consistent with otherwise applicable law, the Comptroller General, or any of the duly authorized representatives of the Comptroller General, shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, territory, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this Act; and

(2) that the Comptroller General, or his representative, considers necessary to the performance of an evaluation, audit, or review.

(b) CHIEF FINANCIAL OFFICER.—Consistent with otherwise applicable law, the Chief Financial Officer of the Corporation shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, territory[1] Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this Act; and

(2) that relates to the duties of the Chief Financial Officer.

(c) INSPECTOR GENERAL.—Consistent with otherwise applicable law, the Inspector General of the Corporation shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, territory, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under the national service laws; and

(2) that relates to—

(A) such assistance; and

(B) the duties of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.).

[1] So in law. Probably should read "territory,". See amendment made by section 1611(2)(B) of Public Law 111–13 (123 Stat. 1537).

SEC. 184. [42 U.S.C. 12644] DRUG-FREE WORKPLACE REQUIREMENTS.

All programs receiving grants under this title shall be subject to the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707).

SEC. 184A. [42 U.S.C. 12644a] AVAILABILITY OF ASSISTANCE.

A reference in subtitle C, D, E, or H of title I regarding an entity eligible to receive direct or indirect assistance to carry out a national service program shall include a non-profit organization promoting competitive and non-competitive sporting events involving individuals with disabilities (including the Special Olympics), which enhance the quality of life for individuals with disabilities.

SEC. 185. [42 U.S.C. 12644b] CONSOLIDATED APPLICATION AND REPORTING REQUIREMENTS.

(a) IN GENERAL.—To promote efficiency and eliminate duplicative requirements, the Corporation shall consolidate or modify application procedures and reporting requirements for programs, projects, and activities funded under the national service laws.

(b) REPORT TO CONGRESS.—Not later than 18 months after the effective date of the Serve America Act, the Corporation shall submit to the authorizing committees a report containing information on the actions taken to consolidate or modify the application procedures and reporting requirements for programs, projects, and activities funded under the national service laws, including a description of the procedures for consultation with recipients of the funding.

SEC. 186. [42 U.S.C. 12645] SUSTAINABILITY.

The Corporation, after consultation with State Commissions and recipients of assistance, may set sustainability goals for projects or programs under the national service laws, so that recipients of assistance under the national service laws are carrying out sustainable projects or programs. Such sustainability goals shall be in writing and shall be used—

(1) to build the capacity of the projects or programs that receive assistance under the national service laws to meet community needs;

(2) in providing technical assistance to recipients of assistance under the national service laws regarding acquiring and leveraging non-Federal funds for support of the projects or programs that receive such assistance; and

(3) to determine whether the projects or programs, receiving such assistance, are generating sufficient community support.

SEC. 187. [42 U.S.C. 12645a] GRANT PERIODS.

Unless otherwise specifically provided, the Corporation has authority to award a grant or contract, or enter into a cooperative agreement, under the national service laws for a period of 3 years.

SEC. 188. [42 U.S.C. 12645b] GENERATION OF VOLUNTEERS.

In making decisions on applications for assistance or approved national service positions under the national service laws, the Corporation shall take into consideration the extent to which the applicant's proposal will increase the involvement of volunteers in meet-

ing community needs. In reviewing the application for this purpose, the Corporation may take into account the mission of the applicant.

SEC. 189. [42 U.S.C. 12645c] LIMITATION ON PROGRAM GRANT COSTS.

(a) LIMITATION ON GRANT AMOUNTS.—Except as otherwise provided by this section, the amount of funds approved by the Corporation for a grant to operate a program authorized under the national service laws, for supporting individuals serving in approved national service positions, may not exceed $18,000 per full-time equivalent position.

(b) COSTS SUBJECT TO LIMITATION.—The limitation under subsection (a), and the increased limitation under subsection (e)(1), shall apply to the Corporation's share of the member support costs, staff costs, and other costs to operate a program authorized under the national service laws incurred, by the recipient of the grant.

(c) COSTS NOT SUBJECT TO LIMITATION.—The limitation under subsection (a), and the increased limitation under subsection (e)(1), shall not apply to expenses under a grant authorized under the national service laws to operate a program that are not included in the grant award for operating the program.

(d) ADJUSTMENTS FOR INFLATION.—The amounts specified in subsections (a) and (e)(1) shall be adjusted each year after 2008 for inflation as measured by the Consumer Price Index for All Urban Consumers published by the Secretary of Labor.

(e) WAIVER AUTHORITY AND REPORTING REQUIREMENT.—

(1) WAIVER.—The Chief Executive Officer may increase the limitation under subsection (a) to not more than $19,500 per full-time equivalent position if necessary to meet the compelling needs of a particular program, such as—

(A) exceptional training needs for a program serving disadvantaged youth;

(B) the need to pay for increased costs relating to the participation of individuals with disabilities;

(C) the needs of tribal programs or programs located in the territories; and

(D) the need to pay for start-up costs associated with a first-time recipient of assistance under a program of the national service laws.

(2) REPORTS.—The Chief Executive Officer shall report to the authorizing committees annually on all limitations increased under this subsection, with an explanation of the compelling needs justifying such increases.

SEC. 189A. [42 U.S.C. 12645d] MATCHING FUNDS FOR SEVERELY ECONOMICALLY DISTRESSED COMMUNITIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, a severely economically distressed community that receives assistance from the Corporation for any program under the national service laws shall not be subject to any requirements to provide matching funds for any such program, and the Federal share of such assistance for such a community may be 100 percent.

(b) SEVERELY ECONOMICALLY DISTRESSED COMMUNITY.—For the purposes of this section, the term "severely economically distressed community" means—

(1) an area that has a mortgage foreclosure rate, home price decline, and unemployment rate all of which are above the national average for such rates or level, for the most recent 12 months for which satisfactory data are available; or

(2) a residential area that lacks basic living necessities, such as water and sewer systems, electricity, paved roads, and safe, sanitary housing.

SEC. 189B. [42 U.S.C. 12645e] AUDITS AND REPORTS.

The Corporation shall comply with applicable audit and reporting requirements as provided in the Chief Financial Officers Act of 1990 (31 U.S.C. 901 note; Public Law 101–576) and chapter 91 of title 31, United States Code (commonly known as the "Government Corporation Control Act"). The Corporation shall report to the authorizing committees any failure to comply with such requirements.

SEC. 189C. [42 U.S.C. 12645f] RESTRICTIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS.

(a) GENERAL PROHIBITION.—Nothing in the national service laws shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

(b) PROHIBITION ON ENDORSEMENT OF CURRICULUM.—Notwithstanding any other prohibition of Federal law, no funds provided to the Corporation under this Act may be used by the Corporation to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

(c) PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION STANDARDS.—Notwithstanding any other provision of Federal law, not State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

SEC. 189D. [42 U.S.C. 12645g] CRIMINAL HISTORY CHECKS.

(a) IN GENERAL.—Each entity selecting individuals to serve in a position in which the individuals receive a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws, shall, subject to regulations and requirements established by the Corporation, conduct criminal history checks for such individuals.

(b) REQUIREMENTS.—A criminal history check under subsection (a) shall, except in cases approved for good cause by the Corporation, include—

(1) a name-based search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.); and

(2)(A) a search of the State criminal registry or repository in the State in which the program is operating and the State in which the individual resides at the time of application; or

(B) submitting fingerprints to the Federal Bureau of Investigation for a national criminal history background check.

(c) ELIGIBILITY PROHIBITION.—An individual shall be ineligible to serve in a position described under subsection (a) if such individual—

(1) refuses to consent to the criminal history check described in subsection (b);

(2) makes a false statement in connection with such criminal history check;

(3) is registered, or is required to be registered, on a State sex offender registry or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.); or

(4) has been convicted of murder, as described in section 1111 of title 18, United States Code.

(d) SPECIAL RULE FOR INDIVIDUALS WORKING WITH VULNERABLE POPULATIONS.—

(1) IN GENERAL.—Notwithstanding subsection (b), on and after the date that is 2 years after the date of enactment of the Serve America Act, a criminal history check under subsection (a) for each individual described in paragraph (2) shall, except for an entity described in paragraph (3), include—

(A) a name-based search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.);

(B) a search of the State criminal registry or repository in the State in which the program is operating and the State in which the individual resides at the time of application; and

(C) submitting fingerprints to the Federal Bureau of Investigation for a national criminal history background check.

(2) INDIVIDUALS WITH ACCESS TO VULNERABLE POPULATIONS.—An individual described in this paragraph is an individual age 18 or older who—

(A) serves in a position in which the individual receives a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws; and

(B) as a result of such individual's service in such position, has or will have access, on a recurring basis, to—

(i) children age 17 years or younger;

(ii) individuals age 60 years or older; or

(iii) individuals with disabilities.

(3) EXCEPTIONS.—The provisions of this subsection shall not apply to an entity—

(A) where the service provided by individuals serving with the entity to a vulnerable population described in paragraph (2)(B) is episodic in nature or for a 1-day period;

(B) where the cost to the entity of complying with this subsection is prohibitive;

(C) where the entity is not authorized, or is otherwise unable, under State law, to access the national criminal history background check system of the Federal Bureau of Investigation;

(D) where the entity is not authorized, or is otherwise unable, under Federal law, to access the national criminal history background check system of the Federal Bureau of Investigation; or

(E) to which the Corporation otherwise provides an exemption from this subsection for good cause.

Subtitle G—Corporation for National and Community Service

SEC. 191. [42 U.S.C. 12651] CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

There is established a Corporation for National and Community Service that shall administer the programs established under the national service laws. The Corporation shall be a Government corporation, as defined in section 103 of title 5, United States Code.

SEC. 192. [42 U.S.C. 12651a] BOARD OF DIRECTORS.

(a) COMPOSITION.—

(1) IN GENERAL.—There shall be in the Corporation a Board of Directors (referred to in this subtitle as the "Board") that shall be composed of—

(A) 15 members, including an individual between the ages of 16 and 25 who—

(i) has served in a school-based or community-based service-learning program; or

(ii) is or was a participant or a supervisor in a program;

to be appointed by the President, by and with the advice and consent of the Senate; and

(B) the ex officio nonvoting members described in paragraph (3).

(2) QUALIFICATIONS.—To the maximum extent practicable, the President shall appoint members—

(A) who have extensive experience in volunteer or service activities, which may include programs funded under one of the national service laws, and in State government;

(B) who represent a broad range of viewpoints;

(C) who are experts in the delivery of human, educational, environmental, or public safety services;

(D) so that the Board shall be diverse according to race, ethnicity, age, gender, and disability characteristics; and

(E) so that no more than 50 percent of the appointed members of the Board, plus 1 additional appointed member, are from a single political party.

(3) EX OFFICIO MEMBERS.—The Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Defense, the Attorney General, the Director of the Peace Corps, the Administrator of the Environmental Protec-

tion Agency, and the Chief Executive Officer shall serve as ex officio nonvoting members of the Board.

(b) OFFICERS.—

(1) CHAIRPERSON.—The President shall appoint a member of the Board to serve as the initial Chairperson of the Board. Each subsequent Chairperson shall be elected by the Board from among its members.

(2) VICE CHAIRPERSON.—The Board shall elect a Vice Chairperson from among its membership.

(3) OTHER OFFICERS.—The Board may elect from among its membership such additional officers of the Board as the Board determines to be appropriate.

(c) TERMS.—Subject to subsection (e), each appointed member shall serve for a term of 5 years.

(d) VACANCIES.—If a vacancy occurs on the Board, a new member shall be appointed by the President, by and with the advice and consent of the Senate, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(e) SERVICE UNTIL APPOINTMENT OF SUCCESSOR.—A voting member of the Board whose term has expired may continue to serve on the Board until the date on which the member's successor takes office, which period shall not exceed 1 year.

SEC. 192A. [42 U.S.C. 12651b] AUTHORITIES AND DUTIES OF THE BOARD OF DIRECTORS.

(a) MEETINGS.—The Board shall meet not less often than 3 times each year. The Board shall hold additional meetings at the call of the Chairperson of the Board, or if 6 members of the Board request such meetings in writing.

(b) QUORUM.—A majority of the appointed members of the Board shall constitute a quorum.

(c) AUTHORITIES OF OFFICERS.—

(1) CHAIRPERSON.—The Chairperson of the Board may call and conduct meetings of the Board.

(2) VICE CHAIRPERSON.—The Vice Chairperson of the Board may conduct meetings of the Board in the absence of the Chairperson.

(d) EXPENSES.—While away from their homes or regular places of business on the business of the Board, members of such Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for persons employed intermittently in the Government service.

(e) SPECIAL GOVERNMENT EMPLOYEES.—For purposes of the provisions of chapter 11 of part I of title 18, United States Code, and any other provision of Federal law, a member of the Board (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(f) STATUS OF MEMBERS.—

(1) TORT CLAIMS.—For the purposes of the tort claims provisions of chapter 171 of title 28, United States Code, a member of the Board shall be considered to be a Federal employee.

(2) OTHER CLAIMS.—A member of the Board shall have no personal liability under Federal law with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the Board, in connection with any transaction involving the provision of financial assistance by the Corporation. This paragraph shall not be construed to 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 such member on the Board.

(3) EFFECT ON OTHER LAW.—This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

(B) to affect any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a member of the Board participating in such transactions; or

(C) to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(g) DUTIES.—The Board shall have responsibility for setting overall policy for the Corporation and shall—

(1) review and approve the strategic plan described in section 193A(b)(1), and annual updates of the plan, and review the budget proposal in advance of submission to the Office of Management and Budget;

(2) review and approve the proposal described in section 193A(b)(2)(A), with respect to the grants, allotments, contracts, financial assistance, payment, and positions referred to in such section;

(3) review and approve the proposal described in section 193A(b)(3)(A), regarding the regulations, standards, policies, procedures, programs, and initiatives referred to in such section;

(4) review and approve the evaluation plan described in section 193A(b)(4)(A);

(5)(A) review, and advise the Chief Executive Officer regarding, the actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws;

(B) inform the Chief Executive Officer of any aspects of the actions of the Chief Executive Officer that are not in compliance with the annual strategic plan referred to in paragraph (1), the proposals referred to in paragraphs (2) and (3), or the plan referred to in paragraph (4), or are not consistent with the objectives of the national service laws; and

(C) review the performance of the Chief Executive Officer annually and forward a report on that review to the President;

(6) receive any report as provided under subsection (b), (c), or (d) of section 8E of the Inspector General Act of 1978;

(7) make recommendations relating to a program of research for the Corporation with respect to national and community service programs, including service-learning programs;

(8) advise the President and the authorizing committees concerning developments in national and community service that merit the attention of the President and the authorizing committees;

(9) ensure effective dissemination of information regarding the programs and initiatives of the Corporation;

(10) notwithstanding any other provision of law—

(A) make grants to or contracts with Federal and other public departments or agencies, and private nonprofit organizations, for the assignment or referral of volunteers under the provisions of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) (except as provided in section 108 of such Act), which may provide that the agency or organization shall pay all or a part of the costs of the program; and

(B) enter into agreements with other Federal agencies or private nonprofit organizations for the support of programs under the national service laws, which—

(i) may provide that the agency or organization shall pay all or a part of the costs of the program, except as is provided in section 121(b); and

(ii) shall provide that the program (including any program operated by another Federal agency) will comply with all requirements related to evaluation, performance, and other goals applicable to similar programs under the national service laws, as determined by the Corporation,

(11) prepare and make recommendations to the authorizing committees and the President for changes in the national service laws resulting from the studies and demonstrations the Chief Executive Officer is required to carry out under section 193A(b)(11), which recommendations shall be submitted to the authorizing committees and President not later than January 1, 2012.

(h) ADMINISTRATION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board.

(i) LIMITATION ON PARTICIPATION.—All employees and officers of the Corporation shall recuse themselves from decisions that would constitute conflicts of interest.

(j) COORDINATION WITH OTHER FEDERAL ACTIVITIES.—As part of the agenda of meetings of the Board under subsection (a), the Board shall review projects and programs conducted or funded by the Corporation under the national service laws to improve the coordination between such projects and programs, and the activities of other Federal agencies that deal with the individuals and communities participating in or benefiting from such projects and programs. The ex officio members of the Board specified in section 192(a)(3) shall jointly plan, implement, and fund activities in connection with projects and programs conducted under the national service laws to ensure that Federal efforts attempt to address the total needs of participants in such programs and projects, their

communities, and the persons and communities the participants serve.

SEC. 193. [42 U.S.C. 12651c] CHIEF EXECUTIVE OFFICER.

(a) APPOINTMENT.—The Corporation shall be headed by an individual who shall serve as Chief Executive Officer of the Corporation, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) COMPENSATION.—The Chief Executive Officer shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.

(c) REGULATIONS.—The Chief Executive Officer shall prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws.

SEC. 193A. [42 U.S.C. 12651d] AUTHORITIES AND DUTIES OF THE CHIEF EXECUTIVE OFFICER.

(a) GENERAL POWERS AND DUTIES.—The Chief Executive Officer shall be responsible for the exercise of the powers and the discharge of the duties of the Corporation that are not reserved to the Board, and shall have authority and control over all personnel of the Corporation, except as provided in section 8E of the Inspector General Act of 1978.

(b) DUTIES.—In addition to the duties conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer, in collaboration with the State Commissions, shall—

(1) prepare and submit to the Board a strategic plan, including a plan for having 50 percent of all approved national service positions be full-time positions by 2012, every 3 years, and annual updates of the plan, for the Corporation with respect to the major functions and operations of the Corporation;

(2)(A) prepare and submit to the Board a proposal with respect to such grants and allotments, contracts, other financial assistance, and designation of positions as approved national service positions, as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 192A(g)(2), make such grants and allotments, enter into such contracts, award such other financial assistance, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of financial assistance otherwise authorized under the national service laws, with necessary adjustments on account of overpayments and underpayments), and designate such positions as approved national service positions, approved summer of service positions, and approved silver scholar positions as are necessary or appropriate to carry out the national service laws;

(3)(A) prepare and submit to the Board a proposal regarding, the regulations established under section 195(b)(3)(A), and such other standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 192A(g)(3)—

(i) establish such standards, policies, and procedures as are necessary or appropriate to carry out the national service laws; and

(ii) establish and administer such programs and initiatives as are necessary or appropriate to carry out the national service laws;

(4)(A) prepare and submit to the Board a plan for the evaluation of programs established under the national service laws, in accordance with section 179; and

(B) after receiving an approved proposal under section 192A(g)(4)—

(i) establish measurable performance goals and objectives for such programs, in accordance with section 179; and

(ii) provide for periodic evaluation of such programs to assess the manner and extent to which the programs achieve the goals and objectives, in accordance with such section;

(5) consult with appropriate Federal agencies in administering the programs and initiatives;

(6) suspend or terminate payments and positions described in paragraph (2)(B), in accordance with section 176;

(7) prepare and submit to the authorizing committees and the Board an annual report on actions taken to achieve the goal of having 50 percent of all approved national service positions be full-time positions by 2012 as described in paragraph (1), including an assessment of the progress made toward achieving that goal and the actions to be taken in the coming year toward achieving that goal;

(8) prepare and submit to the Board an annual report, and such interim reports as may be necessary, describing the major actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives;

(9) inform the Board of, and provide an explanation to the Board regarding, any substantial differences regarding the implementation of the national service laws between—

(A) the actions of the Chief Executive Officer; and

(B)(i) the strategic plan approved by the Board under section 192A(g)(1);

(ii) the proposals approved by the Board under paragraph (2) or (3) of section 192A(g); or

(iii) the evaluation plan approved by the Board under section 192A(g)(4);

(10) prepare and submit to the authorizing committees an annual report, and such interim reports as may be necessary, describing—

(A) the services referred to in paragraph (1), and the money and property referred to in paragraph (2), of section 196(a) that have been accepted by the Corporation;

(B) the manner in which the Corporation used or disposed of such services, money, and property; and

(C) information on the results achieved by the programs funded under the national service laws during the year preceding the year in which the report is prepared;

(11) provide for studies (including the evaluations described in subsection (f)) and demonstrations that evaluate, and prepare and submit to the Board periodically, a report containing recommendations regarding, issues related to—

(A) the administration and organization of programs authorized under the national service laws or under Public Law 91–378 (referred to in this subparagraph as "service programs"), including—

(i) whether the State and national priorities, as described in section 122(f)(1), designed to meet unmet human, education, environmental, or public safety needs are being addressed by this Act;

(ii) the manner in which—

(I) educational and other outcomes of both stipended and nonstipended service and service-learning are defined and measured in such service programs; and

(II) such outcomes should be defined and measured in such service programs;

(iii) 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;

(iv) the role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(v) the potential for cost savings and coordination of support and oversight services from combining functions performed by ACTION State offices and State Commissions;

(vi) the implications of the results from such studies and demonstrations for authorized funding levels for the service programs; and

(vii) other issues that the Director determines to be relevant to the administration and organization of the service programs; and

(B) the number, potential consolidation, and future organization of national service or domestic volunteer service programs that are authorized under Federal law, including VISTA, service corps assisted under subtitle C and other programs authorized by this Act, programs administered by the Public Health Service, the Department of Defense, or other Federal agencies, programs regarding teacher corps, and programs regarding work-study and higher education loan forgiveness or forbearance programs authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) related to community service;

(12) for purposes of section 178(d)(6)(B), issue regulations to waive the disqualification of members of the Board and members of the State Commissions selectively in a random, nondiscretionary manner and only to the extent necessary to establish the quorum involved, including rules that forbid each member of the Board and each voting member of a State Commission to participate in any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity of which such member of the Board or such member of the State Commission is, or in the 1-year period before the submission of the application referred to in such section was, an officer, director, trustee, full-time volunteer, or employee;

(13) bolster the public awareness of and recruitment efforts for the wide range of service opportunities for citizens of all ages, regardless of socioeconomic status or geographic location, through a variety of methods, including—

(A) print media;

(B) the Internet and related emerging technologies;

(C) television;

(D) radio;

(E) presentations at public or private forums;

(F) other innovative methods of communication; and

(G) outreach to offices of economic development, State employment security agencies, labor organizations and trade associations, local educational agencies, institutions of higher education, agencies and organizations serving veterans and individuals with disabilities, and other institutions or organizations from which participants for programs receiving assistance from the national service laws can be recruited;

(14) identify and implement methods of recruitment to—

(A) increase the diversity of participants in the programs receiving assistance under the national service laws; and

(B) increase the diversity of service sponsors of programs desiring to receive assistance under the national service laws;

(15) coordinate with organizations of former participants of national service programs for service opportunities that may include capacity building, outreach, and recruitment for programs receiving assistance under the national service laws;

(16) collaborate with organizations with demonstrated expertise in supporting and accommodating individuals with disabilities, including institutions of higher education, to identify and implement methods of recruitment to increase the number of participants who are individuals with disabilities in the programs receiving assistance under the national service laws;

(17) identify and implement recruitment strategies and training programs for bilingual volunteers in the National Senior Service Corps under title II of the Domestic Volunteer Service Act of 1973;

(18) collaborate with organizations that have established volunteer recruitment programs to increase the recruitment capacity of the Corporation;

(19) where practicable, provide application materials in languages other than English for individuals with limited English proficiency who wish to participate in a national service program;

(20) collaborate with the training and technical assistance programs described in subtitle J with respect to the activities described in section 199N(b));

(21) coordinate the clearinghouses described in section 198O;

(22) coordinate with entities receiving funds under subtitle C in establishing the National Service Reserve Corps under section 198H, through which alumni of the national service programs and veterans can serve in disasters and emergencies (as such terms are defined in section 198H(a));

(23) identify and implement strategies to increase awareness among Indian tribes of the types and availability of assistance under the national service laws, increase Native American participation in programs under the national service laws, collect information on challenges facing Native American communities, and designate a Strategic Advisor for Native American Affairs to be responsible for the execution of those activities under the national service laws;

(24) conduct outreach to ensure the inclusion of economically disadvantaged individuals in national service programs and activities authorized under the national service laws; and

(25) ensure that outreach, awareness, and recruitment efforts are consistent with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) POWERS.—In addition to the authority conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer may—

(1) establish, alter, consolidate, or discontinue such organizational units or components within the Corporation as the Chief Executive Officer considers necessary or appropriate, consistent with Federal law, and shall, to the maximum extent practicable, consolidate such units or components of the divisions of the Corporation described in section 194(a)(3) as may be appropriate to enable the two divisions to coordinate common support functions;

(2) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of the national service laws;

(3) with their consent, utilize the services and facilities of Federal agencies with or without reimbursement, and, with the consent of any State, or political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivisions without reimbursement;

(4) allocate and expend funds made available under the national service laws;

(5) disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as the Chief Executive Officer shall determine to be appropriate to public agencies, private organizations, and the general public;

(6) collect or compromise all obligations to or held by the Chief Executive Officer and all legal or equitable rights accruing to the Chief Executive Officer in connection with the payment of obligations in accordance with chapter 37 of title 31, United States Code (commonly known as the "Federal Claims Collection Act of 1966");

(7) file a civil action in any court of record of a State having general jurisdiction or in any district court of the United States, with respect to a claim arising under this Act;

(8) exercise the authorities of the Corporation under section 196;

(9) consolidate the reports to the authorizing committees required under the national service laws, and the report required under section 9106 of title 31, United States Code, into a single report, and submit the report to the authorizing committees on an annual basis;

(10) obtain the opinions of peer reviewers in evaluating applications to the Corporation for assistance under this title; and

(11) generally perform such functions and take such steps consistent with the objectives and provisions of the national service laws, as the Chief Executive Officer determines to be necessary or appropriate to carry out such provisions.

(d) DELEGATION.—

(1) DEFINITION.—As used in this subsection, the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) IN GENERAL.—Except as otherwise prohibited by law or provided in the national service laws, the Chief Executive Officer may delegate any function under this Act, and authorize such successive redelegations of such function as may be necessary or appropriate. No delegation of a function by the Chief Executive Officer under this subsection or under any other provision of this Act shall relieve such Chief Executive Officer of responsibility for the administration of such function.

(3) FUNCTION OF BOARD.—The Chief Executive Officer may not delegate a function of the Board without the permission of the Board.

(e) ACTIONS.—In an action described in subsection (c)(7)—

(1) a district court referred to in such subsection shall have jurisdiction of such a civil action without regard to the amount in controversy;

(2) such an action brought by the Chief Executive Officer shall survive notwithstanding any change in the person occupying the office of Chief Executive Officer or any vacancy in that office;

(3) no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Chief

Executive Officer or the Board or property under the control of the Chief Executive Officer or the Board; and

(4) nothing in this section shall be construed to except litigation arising out of activities under this Act from the application of sections 509, 517, 547, and 2679 of title 28, United States Code.

(f) EVALUATIONS.—

(1) EVALUATION OF LIVING ALLOWANCE.—The Corporation shall arrange for an independent evaluation to determine the levels of living allowances paid in all programs under subtitles C and I, individually, by State, and by region. Such evaluation shall determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(2) EVALUATION OF SUCCESS OF INVESTMENT IN NATIONAL SERVICE.—

(A) EVALUATION REQUIRED.—The Corporation shall arrange for the independent evaluation of the operation of subtitle C to determine the levels of participation of economically disadvantaged individuals in national service programs carried out or supported using assistance provided under section 121.

(B) PERIOD COVERED BY EVALUATION.—The evaluation required by this paragraph shall cover the period beginning on the date the Corporation first makes a grant under section 121, and ending on a date that is as close as is practicable to the the first date that a report is submitted under subsection (b)(11) after the effective date of the Serve America Act.

(C) INCOME LEVELS OF PARTICIPANTS.—The evaluating entity shall determine the total income of each participant who serves, during the period covered by the evaluation, in a national service program carried out or supported using assistance provided under section 121 or in an approved national service position. The total income of the participant shall be determined as of the date the participant was first selected to participate in such a program and shall include family total income unless the evaluating entity determines that the participant was independent at the time of selection.

(D) ASSISTANCE FOR DISTRESSED AREAS.—The evaluating entity shall also determine the amount of assistance provided under section 121 during the period covered by the report that has been expended for projects conducted in areas of economic distress described in section 133(c)(6).

(E) DEFINITIONS.—As used in this paragraph:

(i) INDEPENDENT.—The term "independent" has the meaning given the term in section 480(d) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(d)).

(ii) TOTAL INCOME.—The term "total income" has the meaning given the term in section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)).

(g) RECRUITMENT AND PUBLIC AWARENESS FUNCTIONS.—

(1) EFFORT.—The Chief Executive Officer shall ensure that the Corporation, in carrying out the recruiting and public awareness functions of the Corporation, shall expend at least the level of effort on recruitment and public awareness activities related to the programs carried out under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) as ACTION expended on recruitment and public awareness activities related to programs under the Domestic Volunteer Service Act of 1973 during fiscal year 1993.

(2) PERSONNEL.—The Chief Executive Officer shall assign or hire, as necessary, such additional national, regional, and State personnel to carry out such recruiting and public awareness functions as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Chief Executive Officer shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers in the programs carried out under the Domestic Volunteer Service Act of 1973 or similar programs, and to individuals who have specialized experience in the recruitment of volunteers.

(3) FUNDS.—For the first fiscal year after the effective date of this subsection, and for each fiscal year thereafter, for the purpose of carrying out such recruiting and public awareness functions, the Chief Executive Officer shall obligate not less than 1.5 percent of the amounts appropriated for the fiscal year under section 501(a) of the Domestic Volunteer Service Act of 1973.

(h) AUTHORITY TO CONTRACT WITH BUSINESSES.—The Chief Executive Officer may, through contracts or cooperative agreements, carry out the marketing duties described in subsection (b)(13), with priority given to those entities that have established expertise in the recruitment of disadvantaged youth, members of Indian tribes, and older adults.

(i) CAMPAIGN TO SOLICIT FUNDS.—The Chief Executive Officer may conduct a campaign to solicit funds to conduct outreach and recruitment campaigns to recruit a diverse population of service sponsors of, and participants in, programs and projects receiving assistance under the national service laws.

SEC. 194. [42 U.S.C. 12651e] OFFICERS.

(a) MANAGING DIRECTORS.—

(1) IN GENERAL.—There shall be in the Corporation 2 Managing Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report to the Chief Executive Officer.

(2) COMPENSATION.—The Managing Directors shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(3) DUTIES.—The Corporation shall determine the programs for which the Managing Directors shall have primary responsibility and shall establish the divisions of the Corporation to be headed by the Managing Directors.

(b) INSPECTOR GENERAL.—

(1) OFFICE.—There shall be in the Corporation an Office of the Inspector General.

(2) APPOINTMENT.—The Office shall be headed by an Inspector General, appointed in accordance with the Inspector General Act of 1978.

(c) CHIEF FINANCIAL OFFICER.—

(1) IN GENERAL.—There shall be in the Corporation a Chief Financial Officer, who shall be appointed by the Chief Executive Officer pursuant to subsections (a) and (b) of section 195.

(2) DUTIES.—The Chief Financial Officer shall—

(A) report directly to the Chief Executive Officer regarding financial management matters;

(B) oversee all financial management activities relating to the programs and operations of the Corporation;

(C) develop and maintain an integrated accounting and financial management system for the Corporation, including financial reporting and internal controls;

(D) develop and maintain any joint financial management systems with the Department of Education necessary to carry out the programs of the Corporation; and

(E) direct, manage, and provide policy guidance and oversight of the financial management personnel, activities, and operations of the Corporation.

(d) ASSISTANT DIRECTORS FOR VISTA AND NATIONAL SENIOR VOLUNTEER CORPS.—

(1) APPOINTMENT.—One of the Managing Directors appointed under subsection (a) shall, in accordance with applicable provisions of title 5, United States Code, appoint 4 Assistant Directors who shall report directly to such Managing Director, of which—

(A) 1 Assistant Director shall be responsible for programs carried out under parts A and B of title I of the Domestic Volunteer Service Act of 1973 (the Volunteers in Service to America (VISTA) program) and other antipoverty programs under title I of that Act;

(B) 1 Assistant Director shall be responsible for programs carried out under part A of title II of that Act (relating to the Retired Senior Volunteer Program);

(C) 1 Assistant Director shall be responsible for programs carried out under part B of title II of that Act (relating to the Foster Grandparent Program); and

(D) 1 Assistant Director shall be responsible for programs carried out under part C of title II of that Act (relating to the Senior Companion Program).

(2) EFFECTIVE DATE FOR EXERCISE OF AUTHORITY.—Each Assistant Director appointed pursuant to paragraph (1) may exercise the authority assigned to each such Director only after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993.

SEC. 195. [42 U.S.C. 12651f] EMPLOYEES, CONSULTANTS, AND OTHER PERSONNEL.

(a) EMPLOYEES.—Except as provided in subsection (b), section 194(d), and section 8E of the Inspector General Act of 1978, the Chief Executive Officer shall, in accordance with applicable provi-

sions of title 5, United States Code, appoint and determine the compensation of such employees as the Chief Executive Officer determines to be necessary to carry out the duties of the Corporation.

(b) ALTERNATIVE PERSONNEL SYSTEM.—

(1) AUTHORITY.—The Chief Executive Officer may designate positions in the Corporation as positions to which the Chief Executive Officer may make appointments, and for which the Chief Executive Officer may determine compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, to the extent the Chief Executive Officer determines that such a designation is appropriate and desirable to further the effective operation of the Corporation. The Chief Executive Officer may provide for appointments to such positions to be made on a limited term basis.

(2) APPOINTMENT IN THE COMPETITIVE SERVICE AFTER EMPLOYMENT UNDER ALTERNATIVE PERSONNEL SYSTEM.—The Director of the Office of Personnel Management may grant competitive status for appointment to the competitive service, under such conditions as the Director may prescribe, to an employee who is appointed under this subsection and who is separated from the Corporation (other than by removal for cause).

(3) SELECTION AND COMPENSATION SYSTEM.—

(A) ESTABLISHMENT OF SYSTEM.—The Chief Executive Officer, after obtaining the approval of the Director of the Office of Personnel Management, shall issue regulations establishing a selection and compensation system for employees of the Corporation appointed under paragraph (1). In issuing such regulations, the Chief Executive Officer shall take into consideration the need for flexibility in such a system.

(B) APPLICATION.—The Chief Executive Officer shall appoint and determine the compensation of employees in accordance with the selection and compensation system established under subparagraph (A).

(C) SELECTION.—The system established under subparagraph (A) shall provide for the selection of employees—

(i) through a competitive process; and

(ii) on the basis of the qualifications of applicants and the requirements of the positions.

(D) COMPENSATION.—The system established under subparagraph (A) shall include a scheme for the classification of positions in the Corporation. The system shall require that the compensation of an employee be determined in part on the basis of the job performance of the employee, and in a manner consistent with the principles described in section 5301 of title 5, United States Code. The rate of compensation for each employee compensated under the system shall not exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) CORPORATION REPRESENTATIVE IN EACH STATE.—

(1) DESIGNATION OF REPRESENTATIVE.—The Corporation shall designate 1 employee of the Corporation for each State or group of States to serve as the representative of the Corporation in the State or States and to assist the Corporation in carrying out the activities described in the national service laws in the State or States.

(2) DUTIES.—The representative designated under this subsection for a State or group of States shall serve as the liaison between—

(A) the Corporation and the State Commission that is established in the State or States;

(B) the Corporation and any subdivision of a State, territory, Indian tribe, public or private nonprofit organization, or institution of higher education, in the State or States, that is awarded a grant under section 121 directly from the Corporation; and

(C) after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993, the State Commission and the Corporation employee responsible for programs under the Domestic Volunteer Service Act of 1973 in the State, if the employee is not the representative described in paragraph (1) for the State.

(3) NONVOTING MEMBER OF STATE COMMISSION.—The representative designated under this subsection for a State or group of States shall also serve as a nonvoting member of the State Commission established in the State or States, as described in section 178(c)(3).

(4) COMPENSATION.—If the employee designated under paragraph (1) is an employee whose appointment was made pursuant to section 195(b), the rate of compensation for such employee may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5, United States Code.

(d) CONSULTANTS.—The Chief Executive Officer may procure the temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code.

(e) DETAILS OF PERSONNEL.—The head of any Federal department or agency may detail on a reimbursable basis, or on a nonreimbursable basis for not to exceed 180 calendar days during any fiscal year, as agreed upon by the Chief Executive Officer and the head of the Federal agency, any of the personnel of that department or agency to the Corporation to assist the Corporation in carrying out the duties of the Corporation under the national service laws. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) ADVISORY COMMITTEES.—

(1) ESTABLISHMENT.—The Chief Executive Officer, acting upon the recommendation of the Board, may establish advisory committees in the Corporation to advise the Board with respect to national service issues, such as the type of programs to be established or assisted under the national service laws, prior-

ities and criteria for such programs, and methods of conducting outreach for, and evaluation of, such programs.

(2) COMPOSITION.—Such an advisory committee shall be composed of members appointed by the Chief Executive Officer, with such qualifications as the Chief Executive Officer may specify.

(3) EXPENSES.—Members of such an advisory committee may be allowed travel expenses as described in section 192A(d).

(4) STAFF.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Chief Executive Officer is authorized to appoint and fix the compensation of such staff as the Chief Executive Officer determines to be necessary to carry out the functions of the advisory committee, without regard to—

(i) the provisions of title 5, United States Code, governing appointments in the competitive service; and

(ii) the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) COMPENSATION.—If a member of the staff appointed under subparagraph (A) was appointed without regard to the provisions described in clauses (i) and (ii) of subparagraph (A), the rate of compensation for such member may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5, United States Code.

(g) PERSONAL SERVICES CONTRACTS.—The Corporation may enter into personal services contracts to carry out research, evaluation, and public awareness related to the national service laws.

SEC. 196. [42 U.S.C. 12651g] ADMINISTRATION.

(a) DONATIONS.—

(1) SERVICES.—

(A) ORGANIZATIONS AND INDIVIDUALS.—Notwithstanding section 1342 of title 31, United States Code, the Corporation may solicit and accept the services of organizations and individuals (other than participants) to assist the Corporation in carrying out the duties of the Corporation under the national service laws, and may provide to such individuals the travel expenses described in section 192A(d).

(B) LIMITATION.—A person who provides assistance, either individually or as a member of an organization, in accordance with subparagraph (A) shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(i) for the purposes of the tort claims provisions of chapter 171 of title 28, United States Code, such a person shall be considered to be a Federal employee;

(ii) for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, such persons shall be considered to be employees, as defined in section 8101(1)(B) of title 5, United States Code, and the provisions of such subchapter shall apply; and

(iii) for purposes of the provisions of chapter 11 of part I of title 18, United States Code, such a person (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(C) INHERENTLY GOVERNMENTAL FUNCTION.—

(i) IN GENERAL.—Such a person shall not carry out an inherently governmental function.

(ii) REGULATIONS.—The Chief Executive Officer shall promulgate regulations to carry out this subparagraph.

(iii) INHERENTLY GOVERNMENTAL FUNCTION.—As used in this subparagraph, the term "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.

(2) PROPERTY.—

(A) IN GENERAL.—The Corporation may solicit, accept, hold, administer, use, and dispose of, in furtherance of the purposes of the national service laws, donations of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise. Donations accepted under this subparagraph shall be used as nearly as possible in accordance with the terms, if any, of such donation.

(B) STATUS OF CONTRIBUTION.—Any donation accepted under subparagraph (A) shall be considered to be a gift, devise, or bequest to, or for the use of, the United States.

(C) RULES.—The Chief Executive Officer shall establish written rules to ensure that the solicitation, acceptance, holding, administration, and use of property described in subparagraph (A)—

(i) will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and

(ii) will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs.

(D) DISPOSITION.—Upon completion of the use by the Corporation of any property accepted pursuant to subparagraph (A) (other than money or monetary proceeds from sales of property so accepted), such completion shall be re-

ported to the General Services Administration and such property shall be disposed of in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

(b) CONTRACTS.—Subject to the Federal Property and Administrative Services Act of 1949, the Corporation may enter into contracts, and cooperative and interagency agreements, with Federal and State agencies, private firms, institutions, and individuals to conduct activities necessary to assist the Corporation in carrying out the duties of the Corporation under the national service laws.

(c) OFFICE OF MANAGEMENT AND BUDGET.—Appropriate circulars of the Office of Management and Budget shall apply to the Corporation.

SEC. 196A. [42 U.S.C. 12651h] CORPORATION STATE OFFICES.

(a) IN GENERAL.—The Chief Executive Officer shall establish and maintain a decentralized field structure that provides for an office of the Corporation for each State. The office for a State shall be located in, or in reasonable proximity to, such State. Only one such office may carry out the duties described in subsection (b) with respect to a State at any particular time. Such State office may be directed by the representative designated under section 195(c).

(b) DUTIES.—Each State office established pursuant to subsection (a) shall—

(1) provide to the State Commissions established under section 178 technical and other assistance for the development and implementation of national service plans under section 178(e)(1);

(2) provide to community-based agencies and other entities within the State technical assistance for the preparation of applications for assistance under the national service laws, utilizing, as appropriate, information and materials provided by the clearinghouses established pursuant to section 198A;

(3) provide to the State Commission and other entities within the State support and technical assistance necessary to assure the existence of an effective system of recruitment, placement, and training of volunteers within the State;

(4) monitor and evaluate the performance of all programs and projects within the State that receive assistance under the national service laws; and

(5) perform such other duties and functions as may be assigned or delegated by the Chief Executive Officer.

SEC. 196B. [42 U.S.C. 12651j] ASSIGNMENT TO STATE COMMISSIONS.

(a) ASSIGNMENT.—In accordance with section 193A(c)(1), the Chief Executive Officer may assign to State Commissions specific programmatic functions upon a determination that such an assignment will increase efficiency in the operation or oversight of a program under the national service laws. In carrying out this section, and before executing any assignment of authority, the Corporation shall seek input from and consult Corporation employees, State Commissions, State educational agencies, and other interested stakeholders.

(b) REPORT.—Not later than 2 years after the effective date of the Serve America Act, the Corporation shall submit a report to the authorizing committees describing the consultation process described in subsection (a), including the stakeholders consulted, the recommendation of stakeholders, and any actions taken by the Corporation under this section.

SEC. 196C. [42 U.S.C. 12651k] STUDY OF INVOLVEMENT OF VETERANS.

(a) STUDY AND REPORT.—The Corporation shall conduct a study and submit a report to the authorizing committees, not later than 3 years after the effective date of the Serve America Act, on—

(1) the number of veterans serving in national service programs historically by year;

(2) strategies being undertaken to identify the specific areas of need of veterans, including any goals set by the Corporation for veterans participating in the service programs;

(3) the impact of the strategies described in paragraph (2) and the Veterans Corps on enabling greater participation by veterans in the national service programs carried out under the national service laws;

(4) how existing programs and activities carried out under the national service laws could be improved to serve veterans, veterans service organizations, families of active-duty military, including gaps in services to veterans;

(5) the extent to which existing programs and activities carried out under the national service laws are coordinated and recommendations to improve such coordination including the methods for ensuring the efficient financial organization of services directed towards veterans; and

(6) how to improve utilization of veterans as resources and volunteers.

(b) CONSULTATION.—In conducting the studies and preparing the reports required under this subsection, the Corporation shall consult with veterans' service organizations, the Secretary of Veterans Affairs, State veterans agencies, the Secretary of Defense, as appropriate, and other individuals and entities the Corporation considers appropriate.

Subtitle H—Investment for Quality and Innovation

PART I—ADDITIONAL CORPORATION ACTIVITIES TO SUPPORT NATIONAL SERVICE

SEC. 198. [42 U.S.C. 12653] ADDITIONAL CORPORATION ACTIVITIES TO SUPPORT NATIONAL SERVICE.

(a) METHODS OF CONDUCTING ACTIVITIES.—The Corporation may carry out this section directly (except as provided in subsection (g)) or through grants, contracts, and cooperative agreements with other entities.

(b) INNOVATION AND QUALITY IMPROVEMENT.—The Corporation may undertake activities to address emergent needs through sum-

mer programs and other activities, and to support service-learning programs and national service programs, including—

(1) programs, including programs for rural youth, under subtitle B or C;

(2) employer-based retiree programs;

(3) intergenerational programs;

(4) programs involving individuals with disabilities as participants providing service; and

(5) programs sponsored by Governors.

(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) RESEARCH.—The Corporation may support research on national service, including service-learning.

(e) YOUTH LEADERSHIP.—The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(f) 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.

(g) GLOBAL YOUTH SERVICE DAY.—

(1) DESIGNATION.—April 24, 2009, and April 23, 2010, are each designated as "Global Youth Service Days". The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate youth-led community improvement and service-learning activities.

(2) FEDERAL ACTIVITIES.—In order to observe Global Youth Service Day at the Federal level, the Corporation and other Federal departments and agencies may organize and carry out appropriate youth-led community improvement and service-learning activities.

(3) ACTIVITIES.—The Corporation and other Federal departments and agencies may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on Global Youth Service Day.

(h) 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 Corporation, 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).

(i) MARTIN LUTHER KING, JR., SERVICE DAY.—

(1) ASSISTANCE.—The Corporation may make grants to eligible entities described in paragraph (2) to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. Such service opportunities shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

(2) ELIGIBLE ENTITIES.—Any entity otherwise eligible for assistance under the national services laws shall be eligible to receive a grant under this subsection.

(3) [repealed]

(4) FEDERAL SHARE.—Grants provided under this subsection to an eligible entity to support the planning and carrying out of a service opportunity in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr., together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity.

(5) CALCULATION OF ENTITY CONTRIBUTIONS.—In determining the non-Federal share of the costs of planning and carrying out a service opportunity supported by a grant under this subsection, the Corporation shall consider in-kind contributions (including facilities, equipment, and services) made to plan or carry out the service opportunity.

(j) CALL TO SERVICE CAMPAIGN.—Not later than 180 days after the date of enactment of the Serve America Act, the Corporation shall conduct a nationwide "Call To Service" campaign, to encourage all people of the United States, regardless of age, race, ethnicity, religion, or economic status, to engage in full- or part-time national service, long- or short-term public service in the nonprofit sector or government, or volunteering. In conducting the campaign, the Corporation may collaborate with other Federal agencies and entities, State Commissions, Governors, nonprofit and faith-based organizations, businesses, institutions of higher education, elementary schools, and secondary schools.

(k) SEPTEMBER 11TH DAY OF SERVICE.—

(1) FEDERAL ACTIVITIES.—The Corporation may organize and carry out appropriate ceremonies and activities, which may include activities that are part of the broader Call to Service Campaign under subsection (j), in order to observe the September 11th National Day of Service and Remembrance at the Federal level.

(2) ACTIVITIES.—The Corporation may make grants and provide other support to community-based organizations to assist in planning and carrying out appropriate service, charity, and remembrance opportunities in conjunction with the September 11th National Day of Service and Remembrance.

(3) CONSULTATION.—The Corporation may consult with and make grants or provide other forms of support to nonprofit organizations with expertise in representing families of victims

of the September 11, 2001 terrorist attacks and other impacted constituencies, and in promoting the establishment of September 11 as an annually recognized National Day of Service and Remembrance.

SEC. 198A. [42 U.S.C. 12653a] PRESIDENTIAL AWARDS FOR SERVICE.

(a) PRESIDENTIAL AWARDS.—

(1) IN GENERAL.—The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding service programs.

(2) INDIVIDUALS AND PROGRAMS.—Notwithstanding section 101—

(A) an individual receiving an award under this subsection need not be a participant in a program authorized under this Act; and

(B) a program receiving an award under this subsection need not be a program authorized under this Act.

(3) NATURE OF AWARD.—In making an award under this section to an individual or program, the President, acting through the Corporation—

(A) is authorized to incur necessary expenses for the honorary recognition of the individual or program; and

(B) is not authorized to make a cash award to such individual or program.

(b) INFORMATION.—The President, acting through the Corporation, shall ensure that information concerning individuals and programs receiving awards under this section is widely disseminated.

SEC. 198B. [42 U.S.C. 12653b] SERVEAMERICA FELLOWSHIPS.

(a) DEFINITIONS.—In this section:

(1) AREA OF NATIONAL NEED.—The term "area of national need" means an area involved in efforts to—

(A) improve education in schools for economically disadvantaged students;

(B) expand and improve access to health care;

(C) improve energy efficiency and conserve natural resources;

(D) improve economic opportunities for economically disadvantaged individuals; or

(E) improve disaster preparedness and response.

(2) ELIGIBLE FELLOWSHIP RECIPIENT.—The term "eligible fellowship recipient" means an individual who is selected by a State Commission under subsection (c) and, as a result of such selection, is eligible for a ServeAmerica Fellowship.

(3) FELLOW.—The term "fellow" means an eligible fellowship recipient who is awarded a ServeAmerica Fellowship and is designated a fellow under subsection (e)(2).

(4) SMALL SERVICE SPONSOR ORGANIZATION.—The term "small service sponsor organization" means a service sponsor organization described in subsection (d)(1) that has not more than 10 full-time employees and 10 part-time employees.

(b) GRANTS.—

(1) IN GENERAL.—From the amounts appropriated under section 501(a)(4)(B) and allotted under paragraph (2)(A), the

Corporation shall make grants (including financial assistance and a corresponding allotment of approved national service positions), to the State Commission of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico with an application approved under this section, to enable such State Commissions to award ServeAmerica Fellowships under subsection (e).

(2) ALLOTMENT; ADMINISTRATIVE COSTS.—

(A) ALLOTMENT.—The amount allotted to a State Commission for a fiscal year shall be equal to an amount that bears the same ratio to the amount appropriated under section 501(a)(4)(B), as the population of the State bears to the total population of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(B) REALLOTMENT.—If a State Commission does not apply for an allotment under this subsection for any fiscal year, or if the State Commission's application is not approved, the Corporation shall reallot the amount of the State Commission's allotment to the remaining State Commissions in accordance with subparagraph (A).

(C) ADMINISTRATIVE COSTS.—Of the amount allotted to a State Commission under subparagraph (A), not more than 1.5 percent of such amount may be used for administrative costs.

(3) NUMBER OF POSITIONS.—The Corporation shall—

(A) establish or increase the number of approved national service positions under this subsection during each of fiscal years 2010 through 2014;

(B) establish the number of approved positions at 500 for fiscal year 2010; and

(C) increase the number of the approved positions to—

(i) 750 for fiscal year 2011;

(ii) 1,000 for fiscal year 2012;

(iii) 1,250 for fiscal year 2013; and

(iv) 1,500 for fiscal year 2014.

(4) USES OF GRANT FUNDS.—

(A) REQUIRED USES.—A grant awarded under this subsection shall be used to enable fellows to carry out service projects in areas of national need.

(B) PERMITTED USES.—A grant awarded under this subsection may be used for—

(i) oversight activities and mechanisms for the service sites of the fellows, as determined necessary by the State Commission or the Corporation, which may include site visits;

(ii) activities to augment the experience of fellows, including activities to engage the fellows in networking opportunities with other national service participants; and

(iii) recruitment or training activities for fellows.

(5) APPLICATIONS.—To be eligible to receive a grant under this subsection, a State Commission shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require, in-

cluding information on the criteria and procedures that the State Commission will use for overseeing ServeAmerica Fellowship placements for service projects, under subsection (e).

(c) ELIGIBLE FELLOWSHIP RECIPIENTS.—

(1) APPLICATION.—

(A) IN GENERAL.—An applicant desiring to become an eligible fellowship recipient shall submit an application to a State Commission that has elected to participate in the program authorized under this section, at such time and in such manner as the Commission may require, and containing the information described in subparagraph (B) and such additional information as the Commission may require. An applicant may submit such application to only 1 State Commission for a fiscal year.

(B) CONTENTS.—The Corporation shall specify information to be provided in an application submitted under this subsection, which—

(i) shall include—

(I) a description of the area of national need that the applicant intends to address in the service project;

(II) a description of the skills and experience the applicant has to address the area of national need;

(III) a description of the type of service the applicant plans to provide as a fellow; and

(IV) information identifying the local area within the State served by the Commission in which the applicant plans to serve for the service project; and

(ii) may include, if the applicant chooses, the size of the registered service sponsor organization with which the applicant hopes to serve.

(2) SELECTION.—Each State Commission shall—

(A) select, from the applications received by the State Commission for a fiscal year, the number of eligible fellowship recipients that may be supported for that fiscal year based on the amount of the grant received by the State Commission under subsection (b); and

(B) make an effort to award one-third of the fellowships available to the State Commission for a fiscal year, based on the amount of the grant received under subsection (b), to applicants who propose to serve the fellowship with small service sponsor organizations registered under subsection (d).

(d) SERVICE SPONSOR ORGANIZATIONS.—

(1) IN GENERAL.—Each service sponsor organization shall—

(A) be a nonprofit organization;

(B) satisfy qualification criteria established by the Corporation or the State Commission, including standards relating to organizational capacity, financial management, and programmatic oversight;

(C) not be a recipient of other assistance, approved national service positions, or approved summer of service positions under the national service laws; and

(D) at the time of registration with a State Commission, enter into an agreement providing that the service sponsor organization shall—

(i) abide by all program requirements;

(ii) provide an amount described in subsection (e)(3)(b) for each fellow serving with the organization through the ServeAmerica Fellowship;

(iii) be responsible for certifying whether each fellow serving with the organization successfully completed the ServeAmerica Fellowship, and record and certify in a manner specified by the Corporation the number of hours served by a fellow for purposes of determining the fellow's eligibility for benefits; and

(iv) provide timely access to records relating to the ServeAmerica Fellowship to the State Commission, the Corporation, and the Inspector General of the Corporation.

(2) REGISTRATION.—

(A) REQUIREMENT.—No service sponsor organization may receive a fellow under this section until the organization registers with the State Commission.

(B) CLEARINGHOUSE.—The State Commission shall maintain a list of registered service sponsor organizations on a public website.

(C) REVOCATION.—If a State Commission determines that a service sponsor organization is in violation of any of the applicable provisions of this section—

(i) the State Commission shall revoke the registration of the organization;

(ii) the organization shall not be eligible to receive assistance, approved national service positions, or approved summer of service positions under this title for not less than 5 years; and

(iii) the State Commission shall have the right to remove a fellow from the organization and relocate the fellow to another site.

(e) FELLOWS.—

(1) IN GENERAL.—To be eligible to participate in a service project as a fellow and receive a ServeAmerica Fellowship, an eligible fellowship recipient shall—

(A) within 3 months after being selected as an eligible fellowship recipient by a State Commission, select a registered service sponsor organization described in subsection (d)—

(i) with which the recipient is interested in serving under this section; and

(ii) that is located in the State served by the State Commission;

(B) enter into an agreement with the organization—

(i) that specifies the service the recipient will provide if the placement is approved; and

(ii) in which the recipient agrees to serve for 1 year on a full-time or part-time basis (as determined by the Corporation); and

(C) submit such agreement to the State Commission.

(2) AWARD.—Upon receiving the eligible fellowship recipient's agreement under paragraph (1), the State Commission shall award a ServeAmerica Fellowship to the recipient and designate the recipient as a fellow.

(3) FELLOWSHIP AMOUNT.—

(A) IN GENERAL.—From amounts received under subsection (b), each State Commission shall award each of the State's fellows a ServeAmerica Fellowship amount that is equal to 50 percent of the amount of the average annual VISTA subsistence allowance.

(B) AMOUNT FROM SERVICE SPONSOR ORGANIZATION.—

(i) IN GENERAL.—Except as provided in clause (ii) and subparagraph (E), the service sponsor organization shall award to the fellow serving such organization an amount that will ensure that the total award received by the fellow for service in the service project (consisting of such amount and the ServeAmerica Fellowship amount the fellow receives under subparagraph (A)) is equal to or greater than 70 percent of the average annual VISTA subsistence allowance.

(ii) SMALL SERVICE SPONSOR ORGANIZATIONS.—In the case of a small service sponsor organization, the small service sponsor organization may decrease the amount of the service sponsor organization award required under clause (i) to not less than an amount that will ensure that the total award received by the fellow for service in the service project (as calculated in clause (i)) is equal to or greater than 60 percent of the average annual VISTA subsistence allowance.

(C) MAXIMUM LIVING ALLOWANCE.—The total amount that may be provided to a fellow under this subparagraph shall not exceed 100 percent of the average annual VISTA subsistence allowance.

(D) PRORATION OF AMOUNT.—In the case of a fellow who is authorized to serve a part-time term of service under the agreement described in paragraph (1)(B)(ii), the amount provided to a fellow under this paragraph shall be prorated accordingly.

(E) WAIVER.—The Corporation may allow a State Commission to waive the amount required under subparagraph (B) from the service sponsor organization for a fellow serving the organization if—

(i) such requirement is inconsistent with the objectives of the ServeAmerica Fellowship program; and

(ii) the amount provided to the fellow under subparagraph (A) is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the ServeAmerica Fellowship program is located.

(F) DEFINITION.—In this paragraph, the term "average annual VISTA subsistence allowance" means 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).

(f) COMPLIANCE WITH INELIGIBLE SERVICE CATEGORIES.—Service under a ServeAmerica Fellowship shall comply with section 132(a). For purposes of applying that section to this subsection, a reference to assistance shall be considered to be a reference to assistance provided under this section.

(g) REPORTS.—Each service sponsor organization that receives a fellow under this section shall, on a biweekly basis, report to the Corporation on the number of hours served and the services provided by that fellow. The Corporation shall establish a web portal for the organizations to use in reporting the information.

(h) EDUCATIONAL AWARDS.—A fellow who serves in a service project under this section shall be considered to have served in an approved national service position and, upon meeting the requirements of section 147 for full-time or part-time national service, shall be eligible for a national service educational award described in such section. The Corporation shall transfer an appropriate amount of funds to the National Service Trust to provide for the national service educational award for such fellow.

SEC. 198C. [42 U.S.C. 12653c] SILVER SCHOLARSHIPS AND ENCORE FELLOWSHIPS.

(a) SILVER SCHOLARSHIP GRANT PROGRAM.—

(1) ESTABLISHMENT.—The Corporation may award fixed-amount grants (in accordance with section 129(l)) to community-based entities to carry out a Silver Scholarship Grant Program for individuals age 55 or older, in which such individuals complete not less than 350 hours of service in a year carrying out projects of national need and receive a Silver Scholarship in the form of a $1,000 national service educational award. Under such a program, the Corporation shall establish criteria for the types of the service required to be performed to receive such award.

(2) TERM.—Each program funded under this subsection shall be carried out over a period of 3 years (which may include 1 planning year), with a 1-year extension possible, if the program meets performance levels developed in accordance with section 179(k) and any other criteria determined by the Corporation.

(3) APPLICATIONS.—To be eligible for a grant under this subsection, a community-based entity shall—

(A) submit to the Corporation an application at such time and in such manner as the Chief Executive Officer may reasonably require; and

(B) be a listed organization as described in subsection (b)(4).

(4) COLLABORATION ENCOURAGED.—A community-based entity awarded a grant under this subsection is encouraged to collaborate with programs funded under title II of the Domestic Volunteer Service Act of 1973 in carrying out this program.

(5) ELIGIBILITY FOR FELLOWSHIP.—An individual is eligible to receive a Silver Scholarship if the community-based entity certifies to the Corporation that the individual has completed not less than 350 hours of service under this section in a 1-year period.

(6) TRANSFER TO TRUST.—The Corporation shall transfer an appropriate amount of funds to the National Service Trust to provide for the national service educational award for each silver scholar under this subsection.

(7) SUPPORT SERVICES.—A community-based entity receiving a fixed-amount grant under this subsection may use a portion of the grant to provide transportation services to an eligible individual to allow such individual to participate in a service project.

(b) ENCORE FELLOWSHIPS.—

(1) ESTABLISHMENT.—The Corporation may award 1-year Encore Fellowships to enable individuals age 55 or older to—

(A) carry out service projects in areas of national need; and

(B) receive training and development in order to transition to full- or part-time public service in the nonprofit sector or government.

(2) PROGRAM.—In carrying out the program, the Corporation shall—

(A) maintain a list of eligible organizations for which Encore Fellows may be placed to carry out service projects through the program and shall provide the list to all Fellowship recipients; and

(B) at the request of a Fellowship recipient—

(i) determine whether the requesting recipient is able to meet the service needs of a listed organization, or another organization that the recipient requests in accordance with paragraph (5)(B), for a service project; and

(ii) upon making a favorable determination under clause (i), award the recipient with an Encore Fellowship, and place the recipient with the organization as an Encore Fellow under paragraph (5)(C).

(3) ELIGIBLE RECIPIENTS.—

(A) IN GENERAL.—An individual desiring to be selected as a Fellowship recipient shall—

(i) be an individual who—

(I) is age 55 or older as of the time the individual applies for the program; and

(II) is not engaged in, but who wishes to engage in, full- or part-time public service in the nonprofit sector or government; and

(ii) submit an application to the Corporation, at such time, in such manner, and containing such information as the Corporation may require, including—

(I) a description of the area of national need that the applicant hopes to address through the service project;

(II) a description of the skills and experience the applicant has to address an area of national need; and

(III) information identifying the region of the United States in which the applicant wishes to serve.

(B) SELECTION BASIS.—In determining which individuals to select as Fellowship recipients, the Corporation shall—

(i) select not more than 10 individuals from each State; and

(ii) give priority to individuals with skills and experience for which there is an ongoing high demand in the nonprofit sector and government.

(4) LISTED ORGANIZATIONS.—To be listed under paragraph (2)(A), an organization shall—

(A) be a nonprofit organization; and

(B) submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require, including—

(i) a description of—

(I) the services and activities the organization carries out generally;

(II) the area of national need that the organization seeks to address through a service project; and

(III) the services and activities the organization seeks to carry out through the proposed service project;

(ii) a description of the skills and experience that an eligible Encore Fellowship recipient needs to be placed with the organization as an Encore Fellow for the service project;

(iii) a description of the training and leadership development the organization shall provide an Encore Fellow placed with the organization to assist the Encore Fellow in obtaining a public service job in the nonprofit sector or government after the period of the Encore Fellowship; and

(iv) evidence of the organization's financial stability.

(5) PLACEMENT.—

(A) REQUEST FOR PLACEMENT WITH LISTED ORGANIZATIONS.—To be placed with a listed organization in accordance with paragraph (2)(B) for a service project, an eligible Encore Fellowship recipient shall submit an application for such placement to the Corporation at such time, in such manner, and containing such information as the Corporation may require.

(B) REQUEST FOR PLACEMENT WITH OTHER ORGANIZATION.—An eligible Encore Fellowship recipient may apply to the Corporation to serve the recipient's Encore Fellowship year with a nonprofit organization that is not a listed organization. Such application shall be submitted to the

Corporation at such time, in such manner, and containing such information as the Corporation shall require, and shall include—

(i) an identification and description of—

(I) the organization;

(II) the area of national need the organization seeks to address; and

(III) the services or activities the organization carries out to address such area of national need;

(ii) a description of the services the eligible Encore Fellowship recipient shall provide for the organization as an Encore Fellow; and

(iii) a letter of support from the leader of the organization, including—

(I) a description of the organization's need for the eligible Encore Fellowship recipient's services;

(II) evidence that the organization is financially sound;

(III) an assurance that the organization will provide training and leadership development to the eligible Encore Fellowship recipient if placed with the organization as an Encore Fellow, to assist the Encore Fellow in obtaining a public service job in the nonprofit sector or government after the period of the Encore Fellowship; and

(IV) a description of the training and leadership development to be provided to the Encore Fellowship recipient if so placed.

(C) PLACEMENT AND AWARD OF FELLOWSHIP.—If the Corporation determines that the eligible Encore Fellowship recipient is able to meet the service needs (including skills and experience to address an area of national need) of the organization that the eligible fellowship recipient requests under subparagraph (A) or (B), the Corporation shall—

(i) approve the placement of the eligible Encore Fellowship recipient with the organization;

(ii) award the eligible Encore Fellowship recipient an Encore Fellowship for a period of 1 year and designate the eligible Encore Fellowship recipient as an Encore Fellow; and

(iii) in awarding the Encore Fellowship, make a payment, in the amount of $11,000, to the organization to enable the organization to provide living expenses to the Encore Fellow for the year in which the Encore Fellow agrees to serve.

(6) MATCHING FUNDS.—An organization that receives an Encore Fellow under this subsection shall agree to provide, for the living expenses of the Encore Fellow during the year of service, non-Federal contributions in an amount equal to not less than $1 for every $1 of Federal funds provided to the organization for the Encore Fellow through the Encore Fellowship.

(7) TRAINING AND ASSISTANCE.—Each organization that receives an Encore Fellow under this subsection shall provide training, leadership development, and assistance to the Encore

Fellow, and conduct oversight of the service provided by the Encore Fellow.

(8) LEADERSHIP DEVELOPMENT.—Each year, the Corporation shall convene current and former Encore Fellows to discuss the Encore Fellows' experiences related to service under this subsection and discuss strategies for increasing leadership and careers in public service in the nonprofit sector or government.

(c) EVALUATIONS.—The Corporation shall conduct an independent evaluation of the programs authorized under subsections (a) and (b) and widely disseminate the results, including recommendations for improvement, to the service community through multiple channels, including the Corporation's Resource Center or a clearinghouse of effective strategies.

PART II—NATIONAL SERVICE RESERVE CORPS

SEC. 198H. [42 U.S.C. 12653h] NATIONAL SERVICE RESERVE CORPS.

(a) DEFINITIONS.—In this section—

(1) the term "National Service Reserve Corps member" means an individual who—

(A) has completed a term of national service or is a veteran;

(B) has successfully completed training described in subsection (c) within the previous 2 years;

(C) completes not less than 10 hours of volunteering each year (which may include the training session described in subparagraph (B)); and

(D) has indicated interest to the Corporation in responding to disasters and emergencies in a timely manner through the National Service Reserve Corps; and

(2) the term "term of national service" means a term or period of service under section 123.

(b) ESTABLISHMENT OF NATIONAL SERVICE RESERVE CORPS.—

(1) IN GENERAL.—In consultation with the Federal Emergency Management Agency, the Corporation shall establish a National Service Reserve Corps to prepare and deploy National Service Reserve Corps members to respond to disasters and emergencies in support of national service programs and other requesting programs and agencies.

(2) GRANTS OR CONTRACTS.—In carrying out this section, the Corporation may enter into a grant or contract with an organization experienced in responding to disasters or in coordinating individuals who have completed a term of national service or are veterans, or may directly deploy National Service Reserve Corps members, as the Corporation determines necessary.

(c) ANNUAL TRAINING.—The Corporation shall conduct or coordinate annual training sessions, consistent with the training requirements of the Federal Emergency Management Agency, for individuals who have completed a term of national service or are veterans, and who wish to join the National Service Reserve Corps.

(d) DESIGNATION OF ORGANIZATIONS.—

(1) IN GENERAL.—The Corporation shall designate organizations with demonstrated experience in responding to disasters or emergencies, including through using volunteers, for participation in the program under this section.

(2) REQUIREMENTS.—The Corporation shall ensure that every designated organization is—

(A) prepared to respond to disasters or emergencies;

(B) prepared and able to utilize National Service Reserve Corps members in responding to disasters or emergencies; and

(C) willing to respond in a timely manner when notified by the Corporation of a disaster or emergency.

(e) DATABASES.—The Corporation shall develop or contract with an outside organization to develop—

(1) a database of all National Service Reserve Corps members; and

(2) a database of all nonprofit organizations that have been designated by the Corporation under subsection (d).

(f) DEPLOYMENT OF NATIONAL SERVICE RESERVE CORPS.—

(1) MAJOR DISASTERS OR EMERGENCIES.—If a major disaster or emergency is declared by the President pursuant to section 102 of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5122), the Administrator of the Federal Emergency Management Agency, in consultation with the Corporation, may task the National Service Reserve Corps to assist in response.

(2) OTHER DISASTERS OR EMERGENCIES.—For a disaster or emergency that is not declared a major disaster or emergency under section 102 of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5122), the Corporation may directly, or through a grant or contract, deploy the National Service Reserve Corps.

(3) DEPLOYMENT.—Under paragraph (1) or (2), the Corporation may—

(A) deploy interested National Service Reserve Corps members on assignments of not more than 30 days to assist with local needs related to preparing or recovering from the incident in the affected area, either directly or through organizations designated under subsection (d);

(B) make travel arrangements for the deployed National Service Reserve Corps members to the site of the incident; and

(C) provide funds to those organizations that are responding to the incident with deployed National Service Reserve Corps members, to enable the organizations to coordinate and provide housing, living stipends, and insurance for those deployed members.

(4) ALLOWANCE.—Any amounts that are utilized by the Corporation from funds appropriated under section 501(a)(4)(D) to carry out paragraph (1) for a fiscal year shall be kept in a separate fund. Any amounts in such fund that are not used during a fiscal year shall remain available to use to pay National Service Reserve Corps members an allowance, determined by the Corporation, for out-of-pocket expenses.

(5) INFORMATION.—

(A) NATIONAL SERVICE PARTICIPANTS.—The Corporation, the State Commissions, and entities receiving financial assistance for programs under subtitle C of this Act, or under part A of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), shall inform participants about the National Service Reserve Corps upon the participants' completion of their term of national service.

(B) VETERANS.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall inform veterans who are recently discharged, released, or separated from the Armed Forces about the National Service Reserve Corps.

(6) COORDINATION.—In deploying National Service Reserve Corps members under this subsection, the Corporation shall—

(A) avoid duplication of activities directed by the Federal Emergency Management Agency; and

(B) consult and, as appropriate, partner with Citizen Corps programs and other local disaster agencies, including State and local emergency management agencies, voluntary organizations active in disaster, State Commissions, and similar organizations, in the affected area.

PART III—SOCIAL INNOVATION FUNDS PILOT PROGRAM

SEC. 198K. [42 U.S.C. 12653k] FUNDS.

(a) FINDINGS.—Congress finds the following:

(1) Social entrepreneurs and other nonprofit community organizations are developing innovative and effective solutions to national and local challenges.

(2) Increased public and private investment in replicating and expanding proven effective solutions, and supporting new solutions, developed by social entrepreneurs and other nonprofit community organizations could allow those entrepreneurs and organizations to replicate and expand proven initiatives, and support new initiatives, in communities.

(3) A network of Social Innovation Funds could leverage Federal investments to increase State, local, business, and philanthropic resources to replicate and expand proven solutions and invest in supporting new innovations to tackle specific identified community challenges.

(b) PURPOSES.—The purposes of this section are—

(1) to recognize and increase the impact of social entrepreneurs and other nonprofit community organizations in tackling national and local challenges;

(2) to stimulate the development of a network of Social Innovation Funds that will increase private and public investment in nonprofit community organizations that are effectively addressing national and local challenges to allow such organizations to replicate and expand proven initiatives or support new initiatives;

(3) to assess the effectiveness of such Funds in—

(A) leveraging Federal investments to increase State, local, business, and philanthropic resources to address national and local challenges;

(B) providing resources to replicate and expand effective initiatives; and

(C) seeding experimental initiatives focused on improving outcomes in the areas described in subsection (f)(3); and

(4) to strengthen the infrastructure to identify, invest in, replicate, and expand initiatives with effective solutions to national and local challenges.

(c) DEFINITIONS.—In this section:

(1) COMMUNITY ORGANIZATION.—The term "community organization" means a nonprofit organization that carries out innovative, effective initiatives to address community challenges.

(2) COVERED ENTITY.—The term "covered entity" means—

(A) an existing grantmaking institution (existing as of the date on which the institution applies for a grant under this section); or

(B) a partnership between—

(i) such an existing grantmaking institution; and

(ii) an additional grantmaking institution, a State Commission, or a chief executive officer of a unit of general local government.

(3) ISSUE AREA.—The term "issue area" means an area described in subsection (f)(3).

(d) PROGRAM.—From the amounts appropriated to carry out this section that are not reserved under subsections (l) and (m), the Corporation shall establish a Social Innovation Funds grant program to make grants on a competitive basis to eligible entities for Social Innovation Funds.

(e) PERIODS; AMOUNTS.—The Corporation shall make such grants for periods of 5 years, and may renew the grants for additional periods of 5 years, in amounts of not less than $1,000,000 and not more than $10,000,000 per year.

(f) ELIGIBILITY.—To be eligible to receive a grant under subsection (d), an entity shall—

(1) be a covered entity;

(2) propose to focus on—

(A) serving a specific local geographical area; or

(B) addressing a specific issue area;

(3) propose to focus on improving measurable outcomes relating to—

(A) education for economically disadvantaged elementary or secondary school students;

(B) child and youth development;

(C) reductions in poverty or increases in economic opportunity for economically disadvantaged individuals;

(D) health, including access to health services and health education;

(E) resource conservation and local environmental quality;

(F) individual or community energy efficiency;

(G) civic engagement; or

(H) reductions in crime;

(4) have an evidence-based decisionmaking strategy, including—

(A) use of evidence produced by prior rigorous evaluations of program effectiveness including, where available, well-implemented randomized controlled trials; and

(B) a well-articulated plan to—

(i)(I) replicate and expand research-proven initiatives that have been shown to produce sizeable, sustained benefits to participants or society; or

(II) support new initiatives with a substantial likelihood of significant impact; or

(ii) partner with a research organization to carry out rigorous evaluations to assess the effectiveness of such initiatives; and

(5) have appropriate policies, as determined by the Corporation, that protect against conflict of interest, self-dealing, and other improper practices.

(g) APPLICATION.—To be eligible to receive a grant under subsection (d) for national leveraging capital, an eligible entity shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may specify, including, at a minimum—

(1) an assurance that the eligible entity will—

(A) use the funds received through that capital in order to make subgrants to community organizations that will use the funds to replicate or expand proven initiatives, or support new initiatives, in low-income communities;

(B) in making decisions about subgrants for communities, consult with a diverse cross section of community representatives in the decisions, including individuals from the public, nonprofit private, and for-profit private sectors; and

(C) make subgrants of a sufficient size and scope to enable the community organizations to build their capacity to manage initiatives, and sustain replication or expansion of the initiatives;

(2) an assurance that the eligible entity will not make any subgrants to the parent organizations of the eligible entity, a subsidiary organization of the parent organization, or, if the eligible entity applied for funds under this section as a partnership, any member of the partnership;

(3) an identification of, as appropriate—

(A) the specific local geographical area referred to in subsection (f)(2)(A) that the eligible entity is proposing to serve; or

(B) the issue area referred to in subsection (f)(2)(B) that the eligible entity will address, and the geographical areas that the eligible entity is likely to serve in addressing such issue area;

(4)(A) information identifying the issue areas in which the eligible entity will work to improve measurable outcomes;

(B) statistics on the needs related to those issue areas in, as appropriate—

(i) the specific local geographical area described in paragraph (3)(A); or

(ii) the geographical areas described in paragraph (3)(B), including statistics demonstrating that those geographical areas have high need in the specific issue area that the eligible entity is proposing to address; and

(C) information on the specific measurable outcomes related to the issue areas involved that the eligible entity will seek to improve;

(5) information describing the process by which the eligible entity selected, or will select, community organizations to receive the subgrants, to ensure that the community organizations—

(A) are institutions—

(i) with proven initiatives and a demonstrated track record of achieving specific outcomes related to the measurable outcomes for the eligible entity; or

(ii) that articulate a new solution with a significant likelihood for substantial impact;

(B) articulate measurable outcomes for the use of the subgrant funds that are connected to the measurable outcomes for the eligible entity;

(C) will use the funds to replicate, expand, or support their initiatives;

(D) provide a well-defined plan for replicating, expanding, or supporting the initiatives funded;

(E) can sustain the initiatives after the subgrant period concludes through reliable public revenues, earned income, or private sector funding;

(F) have strong leadership and financial and management systems;

(G) are committed to the use of data collection and evaluation for improvement of the initiatives;

(H) will implement and evaluate innovative initiatives, to be important contributors to knowledge in their fields; and

(I) will meet the requirements for providing matching funds specified in subsection (k);

(6) information about the eligible entity, including its experience managing collaborative initiatives, or assessing applicants for grants and evaluating the performance of grant recipients for outcome-focused initiatives, and any other relevant information;

(7) a commitment to meet the requirements of subsection (i) and a plan for meeting the requirements, including information on any funding that the eligible entity has secured to provide the matching funds required under that subsection;

(8) a description of the eligible entity's plan for providing technical assistance and support, other than financial support, to the community organizations that will increase the ability of the community organizations to achieve their measurable outcomes;

(9) information on the commitment, institutional capacity, and expertise of the eligible entity concerning—

(A) collecting and analyzing data required for evaluations, compliance efforts, and other purposes;

(B) supporting relevant research; and

(C) submitting regular reports to the Corporation, including information on the initiatives of the community organizations, and the replication or expansion of such initiatives;

(10) a commitment to use data and evaluations to improve the eligible entity's own model and to improve the initiatives funded by the eligible entity; and

(11) a commitment to cooperate with any evaluation activities undertaken by the Corporation.

(h) SELECTION CRITERIA.—In selecting eligible entities to receive grants under subsection (d), the Corporation shall—

(1) select eligible entities on a competitive basis;

(2) select eligible entities on the basis of the quality of their selection process, as described in subsection (g)(5), the capacity of the eligible entities to manage Social Innovation Funds, and the potential of the eligible entities to sustain the Funds after the conclusion of the grant period;

(3) include among the grant recipients eligible entities that propose to provide subgrants to serve communities (such as rural low-income communities) that the eligible entities can demonstrate are significantly philanthropically underserved;

(4) select a geographically diverse set of eligible entities; and

(5) take into account broad community perspectives and support.

(i) MATCHING FUNDS FOR GRANTS.—

(1) IN GENERAL.—The Corporation may not make a grant to an eligible entity under subsection (d) for a Social Innovation Fund unless the entity agrees that, with respect to the cost described in subsection (d) for that Fund, the entity will make available matching funds in an amount equal to not less than $1 for every $1 of funds provided under the grant.

(2) ADDITIONAL REQUIREMENTS.—

(A) TYPE AND SOURCES.—The eligible entity shall provide the matching funds in cash. The eligible entity shall provide the matching funds from State, local, or private sources, which may include State or local agencies, businesses, private philanthropic organizations, or individuals.

(B) ELIGIBLE ENTITIES INCLUDING STATE COMMISSIONS OR LOCAL GOVERNMENT OFFICES.—

(i) IN GENERAL.—In a case in which a State Commission, a local government office, or both entities are a part of the eligible entity, the State involved, the local government involved, or both entities, respectively, shall contribute not less than 30 percent and not more than 50 percent of the matching funds.

(ii) LOCAL GOVERNMENT OFFICE.—In this subparagraph, the term "local government office" means the office of the chief executive officer of a unit of general local government.

(3) REDUCTION.—The Corporation may reduce by 50 percent the matching funds required by paragraph (1) for an eligible entity serving a community (such as a rural low-income community) that the eligible entity can demonstrate is significantly philanthropically underserved.

(j) SUBGRANTS.—

(1) SUBGRANTS AUTHORIZED.—An eligible entity receiving a grant under subsection (d) is authorized to use the funds made available through the grant to award, on a competitive basis, subgrants to expand or replicate proven initiatives, or support new initiatives with a substantial likelihood of success, to—

(A) community organizations serving low-income communities within the specific local geographical area described in the eligible entity's application in accordance with subsection (g)(3)(A); or

(B) community organizations addressing a specific issue area described in the eligible entity's application in accordance with subsection (g)(3)(B), in low-income communities in the geographical areas described in the application.

(2) PERIODS; AMOUNTS.—The eligible entity shall make such subgrants for periods of not less than 3 and not more than 5 years, and may renew the subgrants for such periods, in amounts of not less than $100,000 per year.

(3) APPLICATIONS.—To be eligible to receive a subgrant from an eligible entity under this section, including receiving a payment for that subgrant each year, a community organization shall submit an application to an eligible entity that serves the specific local geographical area, or geographical areas, that the community organization proposes to serve, at such time, in such manner, and containing such information as the eligible entity may require, including—

(A) a description of the initiative the community organization carries out and plans to replicate or expand, or of the new initiative the community organization intends to support, using funds received from the eligible entity, and how the initiative relates to the issue areas in which the eligible entity has committed to work in the eligible entity's application, in accordance with subsection (g)(4)(A);

(B) data on the measurable outcomes the community organization has improved, and information on the measurable outcomes the community organization seeks to improve by replicating or expanding a proven initiative or supporting a new initiative, which shall be among the measurable outcomes that the eligible entity identified in the eligible entity's application, in accordance with subsection (g)(4)(C);

(C) an identification of the community in which the community organization proposes to carry out an initiative, which shall be within a local geographical area described in the eligible entity's application in accordance with subparagraph (A) or (B) of subsection (g)(3), as applicable;

(D) a description of the evidence-based decisionmaking strategies the community organization uses to improve the measurable outcomes, including—

(i) use of evidence produced by prior rigorous evaluations of program effectiveness including, where available, well-implemented randomized controlled trials; or

(ii) a well-articulated plan to conduct, or partner with a research organization to conduct, rigorous evaluations to assess the effectiveness of initiatives addressing national or local challenges;

(E) a description of how the community organization uses data to analyze and improve its initiatives;

(F) specific evidence of how the community organization will meet the requirements for providing matching funds specified in subsection (k);

(G) a description of how the community organization will sustain the replicated or expanded initiative after the conclusion of the subgrant period; and

(H) any other information the eligible entity may require, including information necessary for the eligible entity to fulfill the requirements of subsection (g)(5).

(k) MATCHING FUNDS FOR SUBGRANTS.—

(1) IN GENERAL.—An eligible entity may not make a subgrant to a community organization under this section for an initiative described in subsection (j)(3)(A) unless the organization agrees that, with respect to the cost of carrying out that initiative, the organization will make available, on an annual basis, matching funds in an amount equal to not less than $1 for every $1 of funds provided under the subgrant. If the community organization fails to make such matching funds available for a fiscal year, the eligible entity shall not make payments for the remaining fiscal years of the subgrant period, notwithstanding any other provision of this part.

(2) TYPES AND SOURCES.—The community organization shall provide the matching funds in cash. The community organization shall provide the matching funds from State, local, or private sources, which may include funds from State or local agencies or private sector funding.

(l) DIRECT SUPPORT.—

(1) PROGRAM AUTHORIZED.—The Corporation may use not more than 10 percent of the funds appropriated for this section to award grants to community organizations serving low-income communities or addressing a specific issue area in geographical areas that have the highest need in that issue area, to enable such community organizations to replicate or expand proven initiatives or support new initiatives.

(2) TERMS AND CONDITIONS.—A grant awarded under this subsection shall be subject to the same terms and conditions as a subgrant awarded under subsection (j).

(3) APPLICATION; MATCHING FUNDS.—Paragraphs (2) and (3) of subsection (j) and subsection (k) shall apply to a community organization receiving or applying for a grant under this subsection in the same manner as such subsections apply to a

community organization receiving or applying for a subgrant under subsection (j), except that references to a subgrant shall mean a grant and references to an eligible entity shall mean the Corporation.

(m) RESEARCH AND EVALUATION.—

(1) IN GENERAL.—The Corporation may reserve not more than 5 percent of the funds appropriated for this section for a fiscal year to support, directly or through contract with an independent entity, research and evaluation activities to evaluate the eligible entities and community organizations receiving grants under subsections (d) and (l) and the initiatives supported by the grants.

(2) RESEARCH AND EVALUATION ACTIVITIES.—

(A) RESEARCH AND REPORTS.—

(i) IN GENERAL.—The entity carrying out this subsection shall collect data and conduct or support research with respect to the eligible entities and community organizations receiving grants under subsections (d) and (l), and the initiatives supported by such eligible entities and community organizations, to determine the success of the program carried out under this section in replicating, expanding, and supporting initiatives, including—

(I) the success of the initiatives in improving measurable outcomes; and

(II) the success of the program in increasing philanthropic investments in philanthropically underserved communities.

(ii) REPORTS.—The Corporation shall submit periodic reports to the authorizing committees including—

(I) the data collected and the results of the research under this subsection;

(II) information on lessons learned about best practices from the activities carried out under this section, to improve those activities; and

(III) a list of all eligible entities and community organizations receiving funds under this section.

(iii) PUBLIC INFORMATION.—The Corporation shall annually post the list described in clause (ii)(III) on the Corporation's website.

(B) TECHNICAL ASSISTANCE.—The Corporation shall, directly or through contract, provide technical assistance to the eligible entities and community organizations that receive grants under subsections (d) and (l).

(C) KNOWLEDGE MANAGEMENT.—The Corporation shall, directly or through contract, maintain a clearinghouse for information on best practices resulting from initiatives supported by the eligible entities and community organizations.

(D) RESERVATION.—Of the funds appropriated under section 501(a)(4)(E) for a fiscal year, not more than 5 percent may be used to carry out this subsection.

PART IV—NATIONAL SERVICE PROGRAMS CLEARINGHOUSES; VOLUNTEER GENERATION FUND

SEC. 1980. [42 U.S.C. 12653o] NATIONAL SERVICE PROGRAMS CLEARINGHOUSES.

(a) IN GENERAL.—The Corporation shall provide assistance, by grant, contract, or cooperative agreement, to entities with expertise in the dissemination of information through clearinghouses to establish 1 or more clearinghouses for information regarding the national service laws, which shall include information on service-learning and on service through other programs receiving assistance under the national service laws.

(b) FUNCTION OF CLEARINGHOUSE.—Such a clearinghouse may—

(1) assist entities carrying out State or local service-learning and national service programs with needs assessments and planning;

(2) conduct research and evaluations concerning service-learning or programs receiving assistance under the national service laws, except that such clearinghouse may not conduct such research and evaluations if the recipient of the grant, contract, or cooperative agreement establishing the clearinghouse under this section is receiving funds for such purpose under part III of subtitle B or under this subtitle (not including this section);

(3)(A) provide leadership development and training to State and local service-learning program administrators, supervisors, service sponsors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among—

(A) entities carrying out service-learning programs and programs offered under the national service laws; and

(B) participants in such programs;

(5) provide and disseminate information and curriculum materials relating to planning and operating service-learning programs and programs offered under the national service laws, to States, territories, Indian tribes, and local entities eligible to receive financial assistance under the national service laws;

(6) provide and disseminate information regarding methods to make service-learning programs and programs offered under the national service laws accessible to individuals with disabilities;

(7) disseminate applications in languages other than English;

(8)(A) gather and disseminate information on successful service-learning programs and programs offered under the national service laws, components of such successful programs, innovative curricula related to service-learning, and service-learning projects; and

(B) coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(9) make recommendations to State and local entities on quality controls to improve the quality of service-learning programs and programs offered under the national service laws;

(10) assist organizations in recruiting, screening, and placing a diverse population of service-learning coordinators and program sponsors;

(11) disseminate effective strategies for working with disadvantaged youth in national service programs, as determined by organizations with an established expertise in working with such youth; and

(12) carry out such other activities as the Chief Executive Officer determines to be appropriate.

SEC. 198P. [42 U.S.C. 12653p] VOLUNTEER GENERATION FUND.

(a) GRANTS AUTHORIZED.—Subject to the availability of appropriations for this section, the Corporation may make grants to State Commissions and nonprofit organizations for the purpose of assisting the State Commissions and nonprofit organizations to—

(1) develop and carry out volunteer programs described in subsection (c); and

(2) make subgrants to support and create new local community-based entities that recruit, manage, or support volunteers as described in such subsection.

(b) APPLICATION.—

(1) IN GENERAL.—Each State Commission or nonprofit organization desiring a grant under this section shall submit an application to the Corporation at such time, in such manner, and accompanied by such information as the Corporation may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall contain—

(A)(i) a description of the program that the applicant will provide;

(B) an assurance that the applicant will annually collect information on—

(i) the number of volunteers recruited for activities carried out under this section, using funds received under this section, and the type and amount of activities carried out by such volunteers; and

(ii) the number of volunteers managed or supported using funds received under this section, and the type and amount of activities carried out by such volunteers;

(C) a description of the outcomes the applicant will use to annually measure and track performance with regard to—

(i) activities carried out by volunteers; and

(ii) volunteers recruited, managed, or supported; and

(D) such additional assurances as the Corporation determines to be essential to ensure compliance with the requirements of this section.

(c) ELIGIBLE VOLUNTEER PROGRAMS.—A State Commission or nonprofit organization receiving a grant under this section shall use the assistance—

(1) directly to carry out volunteer programs or to develop and support community-based entities that recruit, manage, or support volunteers, by carrying out activities consistent with the goals of the subgrants described in paragraph (2); or

(2) through subgrants to community-based entities to carry out volunteer programs or develop and support such entities that recruit, manage, or support volunteers, through 1 or more of the following types of subgrants:

(A) A subgrant to a community-based entity for activities that are consistent with the priorities set by the State's national service plan as described in section 178(e), or by the Corporation.

(B) A subgrant to recruit, manage, or support volunteers to a community-based entity such as a volunteer coordinating agency, a nonprofit resource center, a volunteer training clearinghouse, an institution of higher education, or a collaborative partnership of faith-based and community-based organizations.

(C) A subgrant to a community-based entity that provides technical assistance and support to—

(i) strengthen the capacity of local volunteer infrastructure organizations;

(ii) address areas of national need (as defined in section 198B(a)); and

(iii) expand the number of volunteers nationally.

(d) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Of the funds allocated by the Corporation for provision of assistance under this section for a fiscal year—

(A) the Corporation shall use 50 percent of such funds to award grants, on a competitive basis, to State Commissions and nonprofit organizations for such fiscal year; and

(B) the Corporation shall use 50 percent of such funds make an allotment to the State Commissions of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico based on the formula described in subsections (e) and (f) of section 129, subject to paragraph (2).

(2) MINIMUM GRANT AMOUNT.—In order to ensure that each State Commission is able to improve efforts to recruit, manage, or support volunteers, the Corporation may determine a minimum grant amount for allotments under paragraph (1)(B).

(e) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 percent of the amount of any grant provided under this section for a fiscal year may be used to pay for administrative costs incurred by either the recipient of the grant or any community-based entity receiving assistance or a subgrant under such grant.

(f) MATCHING FUND REQUIREMENTS.—The Corporation share of the cost of carrying out a program that receives assistance under this section, whether the assistance is provided directly or as a

subgrant from the original recipient of the assistance, may not exceed—

(1) 80 percent of such cost for the first year in which the recipient receives such assistance;

(2) 70 percent of such cost for the second year in which the recipient receives such assistance;

(3) 60 percent of such cost for the third year in which the recipient receives such assistance; and

(4) 50 percent of such cost for the fourth year in which the recipient receives such assistance and each year thereafter.

PART V—NONPROFIT CAPACITY BUILDING PROGRAM

SEC. 198S. [42 U.S.C. 12653s] NONPROFIT CAPACITY BUILDING.

(a) DEFINITIONS.—In this section:

(1) INTERMEDIARY NONPROFIT GRANTEE.—The term "intermediary nonprofit grantee" means an intermediary nonprofit organization that receives a grant under subsection (b).

(2) INTERMEDIARY NONPROFIT ORGANIZATION.—The term "intermediary nonprofit organization" means an experienced and capable nonprofit entity with meaningful prior experience in providing organizational development assistance, or capacity building assistance, focused on small and midsize nonprofit organizations.

(3) NONPROFIT.—The term "nonprofit", used with respect to an entity or organization, means—

(A) an entity or organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(B) an entity or organization described in paragraph (1) or (2) of section 170(c) of such Code.

(4) STATE.—The term "State" means each of the several States, and the District of Columbia.

(b) GRANTS.—The Corporation shall establish a Nonprofit Capacity Building Program to make grants to intermediary nonprofit organizations to serve as intermediary nonprofit grantees. The Corporation shall make the grants to enable the intermediary nonprofit grantees to pay for the Federal share of the cost of delivering organizational development assistance, including training on best practices, financial planning, grantwriting, and compliance with the applicable tax laws, for small and midsize nonprofit organizations, especially those nonprofit organizations facing resource hardship challenges. Each of the grantees shall match the grant funds by providing a non-Federal share as described in subsection (f).

(c) AMOUNT.—To the extent practicable, the Corporation shall make such a grant to an intermediary nonprofit organization in each State, and shall make such grant in an amount of not less than $200,000.

(d) APPLICATION.—To be eligible to receive a grant under this section, an intermediary nonprofit organization shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require. The

intermediary nonprofit organization shall submit in the application information demonstrating that the organization has secured sufficient resources to meet the requirements of subsection (f).

(e) PREFERENCE AND CONSIDERATIONS.—

(1) PREFERENCE.—In making such grants, the Corporation shall give preference to intermediary nonprofit organizations seeking to become intermediary nonprofit grantees in areas where nonprofit organizations face significant resource hardship challenges.

(2) CONSIDERATIONS.—In determining whether to make a grant the Corporation shall consider—

(A) the number of small and midsize nonprofit organizations that will be served by the grant;

(B) the degree to which the activities proposed to be provided through the grant will assist a wide number of nonprofit organizations within a State, relative to the proposed amount of the grant; and

(C) the quality of the organizational development assistance to be delivered by the intermediary nonprofit grantee, including the qualifications of its administrators and representatives, and its record in providing services to small and midsize nonprofit organizations.

(f) FEDERAL SHARE.—

(1) IN GENERAL.—The Federal share of the cost as referenced in subsection (b) shall be 50 percent.

(2) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The non-Federal share of the cost as referenced in subsection (b) shall be 50 percent and shall be provided in cash.

(B) THIRD PARTY CONTRIBUTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), an intermediary nonprofit grantee shall provide the non-Federal share of the cost through contributions from third parties. The third parties may include charitable grantmaking entities and grantmaking vehicles within existing organizations, entities of corporate philanthropy, corporations, individual donors, and regional, State, or local government agencies, or other non-Federal sources.

(ii) EXCEPTION.—If the intermediary nonprofit grantee is a private foundation (as defined in section 509(a) of the Internal Revenue Code of 1986), a donor advised fund (as defined in section 4966(d)(2) of such Code), an organization which is described in section 4966(d)(4)(A)(i) of such Code, or an organization which is described in section 4966(d)(4)(B) of such Code, the grantee shall provide the non-Federal share from within that grantee's own funds.

(iii) MAINTENANCE OF EFFORT, PRIOR YEAR THIRD-PARTY FUNDING LEVELS.—For purposes of maintaining private sector support levels for the activities specified by this program, a non-Federal share that includes donations by third parties shall be composed in a way that does not decrease prior levels of funding from the

same third parties granted to the nonprofit intermediary grantee in the preceding year.

(g) RESERVATION.—Of the amount authorized to provide financial assistance under this subtitle, there shall be made available to carry out this section $5,000,000 for each of fiscal years 2010 through 2014.

Subtitle I—American Conservation and Youth Service Corps

SEC. 199. [42 U.S.C. 12501 nt] SHORT TITLE.

This subtitle may be cited as the "American Conservation and Youth Service Corps Act of 1990".

SEC. 199A. [42 U.S.C. 12655] GENERAL AUTHORITY.

The Corporation may make grants to States or local applicants and may transfer funds to the Secretary of Agriculture or to the Secretary of the Interior for the creation or expansion of full-time, part-time, year-round, or summer, youth corps programs. To the extent practicable, the Corporation shall apply the provisions of subtitle C in making grants under this section.

SEC. 199B. [42 U.S.C. 12655a] LIMITATION ON PURCHASE OF CAPITAL EQUIPMENT.

Not to exceed 10 percent of the amount of assistance made available to a program agency under this subtitle shall be used for the purchase of major capital equipment.

SEC. 199C. [42 U.S.C. 12655b] STATE APPLICATION.

(a) SUBMISSION.—To be eligible to receive a grant under this subtitle, a State or Indian tribe (or a local applicant if section 199A applies) shall prepare and submit to the Corporation, an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) GENERAL CONTENT.—An application submitted under subsection (a) shall describe—

(1) any youth corps program proposed to be conducted directly by such applicant with assistance provided under this subtitle; and

(2) any grant program proposed to be conducted by such State with assistance provided under this subtitle for the benefit of entities within such State.

SEC. 199D. [42 U.S.C. 12655c] FOCUS OF PROGRAMS.

(a) IN GENERAL.—Programs that receive assistance under this subtitle may carry out activities that—

(1) in the case of conservation corps programs, focus on—

(A) conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(B) urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(C) fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(D) road and trail maintenance and improvement;

(E) erosion, flood, drought, and storm damage assistance and controls;

(F) stream, lake, waterfront harbor, and port improvement;

(G) wetlands protection and pollution control;

(H) insect, disease, rodent, and fire prevention and control;

(I) the improvement of abandoned railroad beds and rights-of-way;

(J) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(K) reclamation and improvement of strip-mined land;

(L) forestry, nursery, and cultural operations; and

(M) making public facilities accessible to individuals with disabilities.

(2) in the case of youth service corps programs, include participant service in—

(A) State, local, and regional governmental agencies;

(B) nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(C) law enforcement agencies, and penal and probation systems;

(D) private nonprofit organizations that primarily focus on social service such as community action agencies;

(E) activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(F) any other nonpartisan civic activities and services that the Corporation determines to be of a substantial social benefit in meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

(3) encompass the focuses and services described in both paragraphs (1) and (2).

(b) LIMITATION ON SERVICE.—No participant shall perform any specific activity for more than a 6-month period. No participant shall remain enrolled in programs assisted under this subtitle for more than 24 months.

SEC. 199E. [42 U.S.C. 12655d] RELATED PROGRAMS.

An activity administered under the authority of the Secretary of Health and Human Services, that is operated for the same pur-

pose as a program eligible to be carried out under this subtitle, is encouraged to use services available under this subtitle.

SEC. 199F. [42 U.S.C. 12655e] PUBLIC LANDS OR INDIAN LANDS.

(a) LIMITATION.—To be eligible to receive assistance through a grant provided under this subtitle, a program shall carry out activities on public lands or Indian lands, or result in a public benefit.

(b) REVIEW OF APPLICATIONS.—In reviewing applications submitted under section 199C that propose programs or projects to be carried out on public lands or Indian lands, the Corporation shall consult with the Secretary of the Interior.

(c) CONSISTENCY.—A program carried out with assistance provided under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with—

(1) the provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law; and

(2) all management, operational, and other plans and documents that govern the administration of such lands.

(d) PARTICIPATION BY OTHER CONSERVATION PROGRAMS.—Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part to carry out its program.

SEC. 199G. [42 U.S.C. 12655f] TRAINING AND EDUCATION SERVICES.

(a) ASSESSMENT OF SKILLS.—Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) ENHANCEMENT OF SKILLS.—Each program agency shall, through the programs and activities administered under this subtitle, enhance the educational skills of participants.

(c) PROVISION OF PRE-SERVICE AND IN-SERVICE TRAINING AND EDUCATION.—

(1) REQUIREMENT.—Each program agency shall use not less than 10 percent of the assistance made available to such agency under this subtitle in each fiscal year to provide preservice and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) AGREEMENTS FOR ACADEMIC STUDY.—A program agency may enter into arrangements with academic institutions or education providers, including—

(A) local education agencies;

(B) community colleges;

(C) 4-year colleges;

(D) area vocational-technical schools; and

(E) community based organizations;

to evaluate the basic skills of participants and to make academic study available to participants to enable such partici-

pants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills.

(3) COUNSELING.—Career and educational guidance and counseling shall be provided to a participant during a period of in-service training as described in this subsection. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate.

(4) PRIORITY FOR PARTICIPANTS WITHOUT HIGH SCHOOL DIPLOMAS.—A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this subsection.

(d) STANDARDS AND PROCEDURES.—

(1) CONSISTENCY WITH STATE AND LOCAL REQUIREMENTS.—Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection (c) are consistent with the requirements of applicable State and local law and regulations.

(2) ACADEMIC STANDARDS.—The standards and procedures described in paragraph (1) shall provide that an individual serving in a program that receives assistance under this subtitle—

(A) who is not a high school graduate, participate in an educational curriculum so that such individual can earn a high school diploma or the equivalent of such diploma; and

(B) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

SEC. 199H. [42 U.S.C. 12655h] PREFERENCE FOR CERTAIN PROJECTS.

(a) IN GENERAL.—In the consideration of applications submitted under section 199C, the Corporation shall give preference to programs that—

(1) will provide long-term benefits to the public;

(2) will instill a work ethic and a sense of public service in the participants;

(3) will be labor intensive, and involve youth operating in crews;

(4) can be planned and initiated promptly; and

(5) will enhance skills development and educational level and opportunities for the participants.

(b) SPECIAL RULE.—In the consideration of applications under this subtitle the Corporation shall ensure the equitable treatment of both urban and rural areas.

SEC. 199I. [42 U.S.C. 12655i] AGE AND CITIZENSHIP CRITERIA FOR ENROLLMENT.

(a) AGE AND CITIZENSHIP.—Enrollment in programs that receive assistance under this subtitle shall be limited to individuals who, at the time of enrollment, are—

(1) not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years nor more than 21 years of age at the time of the enrollment of such individuals; and

(2) citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(b) PARTICIPATION OF DISADVANTAGED YOUTH.—Programs that receive assistance under this subtitle shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities and homeless youth, are offered opportunities to enroll.

(c) SPECIAL CORPS MEMBERS.—Notwithstanding subsection (a)(1), program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this Act. Programs are encouraged to consider senior citizens as special corps members.

(d) JOINT PROJECTS WITH SENIOR CITIZENS ORGANIZATIONS.—Program agencies shall use not more than 2 percent of amounts received under this subtitle to conduct joint projects with senior citizens organizations to enable senior citizens to serve as mentors for youth participants.

(e) CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit any program agency from limiting enrollment to any age subgroup within the range specified in subsection (a)(1).

SEC. 199J. [42 U.S.C. 12655j] USE OF VOLUNTEERS.

Program agencies may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services under this section shall be subject to the condition that such use does not result in the displacement of any participant.

SEC. 199K. [42 U.S.C. 12655l] LIVING ALLOWANCE.

(a) FULL-TIME SERVICE.—

(1) LIVING ALLOWANCE REQUIRED.—Subject to paragraph (3), each participant in a full-time youth corps program that receives assistance under this subtitle shall receive a living allowance in an amount equal to or greater than 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).

(2) LIMITATION ON FEDERAL SHARE.—The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under this subtitle, section 121, and any other Federal funds shall not exceed 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).

(3) MAXIMUM LIVING ALLOWANCE.—The total amount of an annual living allowance that may be provided to a participant in a full-time youth corps program that receives assistance under this subtitle shall 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).

(4) WAIVER OR REDUCTION OF LIVING ALLOWANCE.—The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) EXEMPTION.—The requirement of paragraph (1) shall not apply to any program that was in existence on the date of the enactment of the National and Community Service Trust Act of 1993.

(b) REDUCTION IN EXISTING PROGRAM BENEFITS.—

(1) IN GENERAL.—Nothing in this section shall be construed to require a program in existence on the date of enactment of this Act to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

(2) FAIR LABOR STANDARDS ACT OF 1938.—For purposes of the Fair Labor Standards Act of 1938, residential youth corps programs under this subtitle will be considered an organized camp.

(c) HEALTH INSURANCE.—In addition to the living allowance provided under subsection (a), program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

(d) FACILITIES, SERVICES, AND SUPPLIES.—

(1) IN GENERAL.—The program agency may deduct, from amounts provided under subsection (a) to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants.

(2) EVALUATION.—The program agency shall establish the amount of the deductions and rates under paragraph (1) after evaluating the costs of providing such room and board to the participant.

(3) DUTIES OF PROGRAM AGENCY.—A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administra-

tive facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(4) OTHER FEDERAL AGENCIES.—

(A) IN GENERAL.—The Corporation may provide services, facilities, supplies, and equipment, including any surplus food and equipment available from other Federal programs, to any program agency carrying out projects under this subtitle.

(B) SECRETARY OF DEFENSE.—Whenever possible, the Corporation shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment.

(5) HEALTH AND SAFETY STANDARDS.—The Corporation and program agencies shall establish standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

SEC. 199L. [42 U.S.C. 12655m] JOINT PROGRAMS.

(a) DEVELOPMENT.—The Corporation may develop, in cooperation with the heads of other Federal agencies, regulations designed to permit, where appropriate, joint programs in which activities supported with assistance made available under this subtitle are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies (including the Job Training Partnership Act and title I of the Workforce Investment Act of 1998). [1]

(b) STANDARDS.—Regulations promulgated under subsection (a) shall establish standards for the approval of joint programs that meet both the purposes of this title and the purposes of such statutes under which assistance is made available to support such projects.

(c) OPERATION OF MANAGEMENT AGREEMENTS.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(d) COORDINATION.—The Corporation and program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

SEC. 199M. [42 U.S.C. 12655n] FEDERAL AND STATE EMPLOYEE STATUS.

(a) IN GENERAL.—Participants and crew leaders shall be responsible to, or be the responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) NON-FEDERAL EMPLOYEES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, a participant or crew leader in a program that receives

[1] Effective July 1, 2000, subsection (a) is amended by striking "the Job Training Partnership Act and".

assistance under this subtitle shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(2) WORK-RELATED INJURY.—For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, a participant or crew leader serving in a program that receives assistance under this subtitle shall be considered an employee of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty", as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated.

(3) TORT CLAIMS PROCEDURE.—For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, a participant or crew leaders assigned to a youth corps program for which a grant has been made to the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term "employee of the government" as defined in section 2671 of such title.

(4) ALLOWANCE FOR QUARTERS.—For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term "employee" as defined in paragraph (3) of subsection (a) of such section.

(c) AVAILABILITY OF APPROPRIATION.—Contract authority under this subtitle shall be subject to the availability of appropriations. Assistance made available under this subtitle shall only be used for activities that are in addition to those which would otherwise be carried out in the area in the absence of such funds.

Subtitle J—Training and Technical Assistance

SEC. 199N. [42 U.S.C. 12657] TRAINING AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—The Corporation shall, directly or through grants, contracts, or cooperative agreements (including through State Commissions), conduct appropriate training for and provide technical assistance to—

(1) programs receiving assistance under the national service laws; and

(2) entities (particularly entities in rural areas and underserved communities) that desire to—

(A) carry out or establish national service programs; or

(B) apply for assistance (including subgrants) under the national service laws.

(b) ACTIVITIES INCLUDED.—Such training and technical assistance activities may include—

(1) providing technical assistance to entities applying to carry out national service programs or entities carrying out national service programs;

(2) promoting leadership development in national service programs;

(3) improving the instructional and programmatic quality of national service programs;

(4) developing the management and budgetary skills of individuals operating or overseeing national service programs, including developing skills to increase the cost effectiveness of the programs under the national service laws;

(5) providing for or improving the training provided to the participants in programs under the national service laws;

(6) facilitating the education of individuals participating in national service programs in risk management procedures, including the training of participants in appropriate risk management practices;

(7) training individuals operating or overseeing national service programs—

(A) in volunteer recruitment, management, and retention to improve the abilities of such individuals to use participants and other volunteers in an effective manner, which training results in high-quality service and the desire of participants and volunteers to continue to serve in other capacities after the program is completed;

(B) in program evaluation and performance measures to inform practices to augment the capacity and sustainability of the national service programs; or

(C) to effectively accommodate individuals with disabilities to increase the participation of individuals with disabilities in national service programs, which training may utilize funding from the reservation of funds under section 129(k) to increase the participation of individuals with disabilities;

(8) establishing networks and collaboration among employers, educators, and other key stakeholders in the community to further leverage resources to increase local participation in national service programs, and to coordinate community-wide planning and service with respect to national service programs;

(9) providing training and technical assistance for the National Senior Service Corps, including providing such training and technical assistance to programs receiving assistance under section 201 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001); and

(10) carrying out such other activities as the Chief Executive Officer determines to be appropriate.

(c) PRIORITY.—In carrying out this section, the Corporation shall give priority to programs under the national service laws and

entities eligible to establish such programs that seek training or technical assistance and that—

(1) seek to carry out high-quality programs where the services are needed most;

(2) seek to carry out high-quality programs where national service programs do not exist or where the programs are too limited to meet community needs;

(3) seek to carry out high-quality programs that focus on and provide service opportunities for underserved rural and urban areas and populations; and

(4) seek to assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

TITLE II—MODIFICATIONS OF EXISTING PROGRAMS

Subtitle B—Publication

SEC. 201. INFORMATION FOR STUDENTS. [Omitted]

SEC. 202. EXIT COUNSELING FOR BORROWERS. [Omitted]

SEC. 203. DEPARTMENT INFORMATION ON DEFERMENTS AND CANCELLATIONS. [Omitted]

SEC. 204. DATA ON DEFERMENTS AND CANCELLATIONS. [Omitted]

Subtitle B—Youthbuild Projects

SEC. 211. YOUTHBUILD PROJECTS.

[See title VII of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5091 et seq.)]

[Title III was repealed by section 1831(a) of Public Law 111–13]

TITLE IV—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

SEC. 401. [42 U.S.C. 12671] PROJECTS.

(a) DEFINITION.—In this section, the term "administrative organization" means a nonprofit private organization that enters into an agreement with the Corporation to carry out this section.

(b) IDENTIFICATION OF PROJECTS.—

(1) ESTIMATED NUMBER.—Not later than March 1, 2002, the administrative organization, after obtaining the guidance of the heads of appropriate Federal agencies, such as the Director of the Office of Homeland Security and the Attorney General, shall—

(A) make an estimate of the number of victims killed as a result of the terrorist attacks on September 11, 2001 (referred to in this section as the "estimated number"); and

(B) compile a list that specifies, for each individual that the administrative organization determines to be such a victim, the name of the victim and the State in which the victim resided.

(2) IDENTIFIED PROJECTS.—The administrative organization may identify approximately the estimated number of community-based national and community service projects that meet the requirements of subsection (d). The administrative organization may name projects in honor of victims described in subsection (b)(1)(A), after obtaining the permission of an appropriate member of the victim's family and the entity carrying out the project.

(c) ELIGIBLE ENTITIES.—To be eligible to have a project named under this section, the entity carrying out the project shall be a political subdivision of a State, a business, a nonprofit organization (which may be a religious organization), an Indian tribe, or an institution of higher education.

(d) PROJECTS.—The administrative organization shall name, under this section, projects—

(1) that advance the goals of unity, and improving the quality of life in communities; and

(2) that will be planned, or for which implementation will begin, within a reasonable period after the date of enactment of the Unity in the Spirit of America Act, as determined by the administrative organization.

(e) WEBSITE AND DATABASE.—The administrative organization shall create and maintain websites and databases, to describe projects named under this section and serve as appropriate vehicles for recognizing the projects.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. [42 U.S.C. 12681] AUTHORIZATION OF APPROPRIATIONS.

(a) TITLE I.—

(1) SUBTITLE B.—

(A) IN GENERAL.—There are authorized to be appropriated to provide financial assistance under subtitle B of title I—

(i) $97,000,000 for fiscal year 2010; and

(ii) such sums as may be necessary for each of fiscal years 2011 through 2014.

(B) PART IV RESERVATION.—Of the amount appropriated under subparagraph (A) for a fiscal year, the Corporation may reserve such sums as may be necessary to carry out part IV of subtitle B of title I.

(C) SECTION 118A.—Of the amount appropriated under subparagraph (A) and not reserved under subparagraph (B) for a fiscal year, not more than $7,000,000 shall be made available for awards to Campuses of Service under section 118A.

(D) SECTION 119(C)(8).—Of the amount appropriated under subparagraph (A) and not reserved under subpara-

graph (B) for a fiscal year, not more than $10,000,000 shall be made available for summer of service program grants under section 119(c)(8), and not more than $10,000,000 shall be deposited in the National Service Trust to support summer of service educational awards, consistent with section 119(c)(8).

(E) SECTION 119(C)(9).—Of the amount appropriated under subparagraph (A) and not reserved under subparagraph (B) for a fiscal year, not more than $20,000,000 shall be made available for youth engagement zone programs under section 119(c)(9).

(F) GENERAL PROGRAMS.—Of the amount remaining after the application of subparagraphs (A) through (E) for a fiscal year—

(i) not more than 60 percent shall be available to provide financial assistance under part I of subtitle B of title I;

(ii) not more than 25 percent shall be available to provide financial assistance under part II of such subtitle; and

(iii) not less than 15 percent shall be available to provide financial assistance under part III of such subtitle.

(2) SUBTITLES C AND D.—There are authorized to be appropriated, for each of fiscal years 2010 through 2014, such sums as may be necessary to provide financial assistance under subtitle C of title I and to provide national service educational awards under subtitle D of title I for the number of participants described in section 121(f)(1) for each such fiscal year.

(3) SUBTITLE E.—

(A) IN GENERAL.—There are authorized to be appropriated to operate the National Civilian Community Corps and provide financial assistance under subtitle E of title I, such sums as may be necessary for each of fiscal years 2010 through 2014.

(B) PRIORITY.—Notwithstanding any other provision of this Act, in obligating the amounts made available pursuant to the authorization of appropriations in this paragraph, priority shall be given to programs carrying out activities in areas for which the President has declared the existence of a major disaster, in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), including a major disaster as a consequence of Hurricane Katrina or Rita.

(4) SUBTITLE H.—

(A) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014 to provide financial assistance under subtitle H of title I.

(B) SECTION 198B.—Of the amount authorized under subparagraph (A) for a fiscal year, such sums as may be necessary shall be made available to provide financial assistance under section 198B and to provide national service educational awards under subtitle D of title I to the

number of participants in national service positions established or increased as provided in section 198B(b)(3) for such year.

(C) SECTION 198C.—Of the amount authorized under subparagraph (A) for a fiscal year, $12,000,000 shall be made available to provide financial assistance under section 198C.

(D) SECTION 198H.—Of the amount authorized under subparagraph (A) for a fiscal year, such sums as may be necessary shall be made available to provide financial assistance under section 198H.

(E) SECTION 198K.—Of the amount authorized under subparagraph (A), there shall be made available to carry out section 198K—

(i) $50,000,000 for fiscal year 2010;
(ii) $60,000,000 for fiscal year 2011;
(iii) $70,000,000 for fiscal year 2012;
(iv) $80,000,000 for fiscal year 2013; and
(v) $100,000,000 for fiscal year 2014.

(F) SECTION 198P.—Of the amount authorized under subparagraph (A), there shall be made available to carry out section 198P—

(i) $50,000,000 for fiscal year 2010;
(ii) $60,000,000 for fiscal year 2011;
(iii) $70,000,000 for fiscal year 2012;
(iv) $80,000,000 for fiscal year 2013; and
(v) $100,000,000 for fiscal year 2014.

(5) ADMINISTRATION.—

(A) IN GENERAL.—There are authorized to be appropriated for the administration of this Act, including financial assistance under section 126(a), such sums as may be necessary for each of fiscal years 2010 through 2014.

(B) CORPORATION.—Of the amounts appropriated under subparagraph (A) for a fiscal year, a portion shall be made available to provide financial assistance under section 126(a).

(6) EVALUATION, TRAINING, AND TECHNICAL ASSISTANCE.—Notwithstanding paragraphs (1), (2), and (4) and any other provision of law, of the amounts appropriated for a fiscal year under subtitles B, C, and H of title I of this Act and under titles I and II of the Domestic Volunteer Service Act of 1973, the Corporation shall reserve not more than 2.5 percent to carry out sections 112(e) and 179A and subtitle J, of which $1,000,000 shall be used by the Corporation to carry out section 179A. Notwithstanding subsection (b), amounts so reserved shall be available only for the fiscal year for which the amounts are reserved.

(b) AVAILABILITY OF APPROPRIATIONS.—Funds appropriated under this section shall remain available until expended.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. AMTRAK WASTE DISPOSAL.

(a) * * *

* * * * * * *

(b) PLAN.—Not later than 1 year after the date of enactment of this Act, the National Railroad Passenger Corporation shall prepare and submit to the appropriate committees of Congress a plan that sets forth a schedule and projected cost for the completion of the retrofit program referred to in the amendment made by subsection (a) within the time limit set forth under such amendment.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on February 5, 1976.

(d) ENVIRONMENTALLY SENSITIVE AREAS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation, after appropriate notice and comment, and in consultation with the National Railroad Passenger Corporation, the Administrator of the Environmental Protection Agency, the Surgeon General, and State and local officials, shall promulgate such regulations as may be necessary to mitigate the impact of the discharge of human waste from railroad passenger cars on areas that may be considered environmentally sensitive.

(e) AVAILABILITY OF INFORMATION CONCERNING DISPOSAL OF WASTE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations directing the National Railroad Passenger Corporation to, where appropriate, publish printed information, and make public address announcements, explaining its existing disposal technology and the retrofit and new equipment program, and encouraging passengers using existing equipment not to dispose of wastes in stations, railroad yards, or while the train is moving through environmentally sensitive areas.

SEC. 602. EXCHANGE PROGRAM WITH COUNTRIES IN TRANSITION FROM TOTALITARIANISM TO DEMOCRACY.

(a) AUTHORIZATION OF ACTIVITIES; GRANTS OR CONTRACTS FOR EXCHANGES WITH FOREIGN COUNTRIES.—Pursuant to the Mutual Educational and Cultural Exchange Act of 1961 and using the authorities contained therein, the President is authorized, when the President considers that it would strengthen international cooperative relations, to provide, by grant, contract, or otherwise, for exchanges with countries that are in transition from totalitarianism to democracy, which include, but are not limited to Poland, Hungary, Czechoslovakia, Bulgaria, and Romania—

(1) by financing studies, research, instruction, and related activities—

(A) of or for American citizens and nationals in foreign countries; and

(B) of or for citizens and nationals of foreign countries in American private businesses, trade associations, unions, chambers of commerce, and local, State, and Federal Gov-

ernment agencies, located in or outside the United States; and

(2) by financing visits and interchanges between the United States and countries in transition from totalitarianism to democracy.

The program under this section shall be coordinated by the Department of State.

(b) TRANSFER OF FUNDS.—The President is authorized to transfer to the appropriate appropriations account of the Department of State such sums as the President shall determine to be necessary out of the travel accounts of the departments and agencies of the United States, except for the Department of State, as the President shall designate. Such transfers shall be subject to the approval of the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate. In addition, the President is authorized to accept such gifts or cost-sharing arrangements as may be proffered to sustain the program under this section.

45 CFR Chapter XXV (Unofficial Version) CORPORATION FOR NATIONAL AND COMMUNITY SERVICE 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 members 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 nonprofit 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 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 include, 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 all applicable OMB circulars on allowable costs (OMB Circular A–87 for State, Local, and Indian Tribal Governments, OMB Circular A–122 for Nonprofit Organizations, and OMB Circular A–21 for Educational Institutions). In general, the OMB circulars do not allow the following as direct costs under the grant: Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

[70 FR 39597, July 8, 2005]

§ 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; and
(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;
(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. Amended at 73 FR 53752, Sept. 17, 2008]

2521 PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

Sec.

§ 2521.5 What definitions apply to this part?
§ 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?
§ 2521.20 What types of AmeriCorps subtitle C program grants are available for award?
§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

Program Matching Requirements
§ 2521.35 Who must comply with matching requirements?
§ 2521.40 What are the matching requirements?
§ 2521.45 What are the limitations on the Federal government's share of program costs?
§ 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share

of costs?
§ 2521.60 To what extent must my share of program costs increase over time?
§ 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 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 Corporation, 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 [1] that have applications approved by the Corporation according to a population-based formula. [2]

[1] The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] 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.

(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 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 53752, Sept. 17, 2008]

2521.35 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 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.

(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	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
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 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	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
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]

2522 PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

Subpart A—Minimum Requirements and Program Types

§ 2522.10 What definitions apply to this part?
§ 2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?
§ 2522.110 What types of programs are eligible to compete for AmeriCorps grants?

Subpart B—Participant Eligibility, Requirements, and Benefits

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?
§ 2522.205 To whom must I apply suitability criteria relating to criminal history?
§ 2522.206 What suitability criteria must I apply to a covered position?
§ 2522.207 What are the procedures I must follow to determine an individual's suitability to serve in a covered position?
§ 2522.210 How are AmeriCorps participants recruited and selected?
§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve for more than one term?
§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?
§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?
§ 2522.245 How are living allowances disbursed?

§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

Subpart C—Application Requirements

§ 2522.300 What are the application requirements for AmeriCorps program grants?
§ 2522.310 What are the application requirements for AmeriCorps educational awards only?
§ 2522.320 [Reserved]

§ 2522.330 [Reserved]

§ 2522.340 How will I know if two projects are the same?

Subpart D—Selection of AmeriCorps Programs

§ 2522.400 What process does the Corporation use to select new grantees?
§ 2522.410 What is the role of the Corporation's Board of Directors in the selection process?
§ 2522.415 How does the grant selection process work?
§ 2522.420 What basic criteria does the Corporation use in making funding decisions?
§ 2522. 425 [Reserved]
§ 2522.430 [Reserved]
§ 2522.435 [Reserved]

§ 2522.440 What weight does the Corporation give to each category of the basic criteria?
§ 2522.445 [Reserved]
§ 2522.448 [Reserved]
§ 2522.450 What types of programs or program models may receive special consideration in the selection process?
§ 2522.455 How do I find out about additional priorities governing the selection process?
§ 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?
§ 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?
§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?
§ 2522. 475 To what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?
§ 2522.480 Can a State's application for formula funds be rejected?
§ 2522.485 How do I calculate my program's budgeted Corporation cost per member service year (MSY)?

Subpart E—Evaluation Requirements

§ 2522.500 What is the purpose of this subpart?
§ 2522.510 To whom does this subpart apply?
§ 2522.520 What special terms are used in this subpart?
§ 2522.530 May I use the Corporation's program grant funds for performance measurement and evaluation?
§ 2522.540 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?

Performance Measures: Requirements and Procedures
§ 2522.550 What basic requirements must I follow in measuring performance under my grant?
§ 2522.560 What are performance measures and performance measurement?
§ 2522.570 What information on performance measures must my grant application

include?
§ 2522.580 What performance measures am I required to submit to the Corporation?
§ 2522.590 Who develops my performance measures?
§ 2522.600 Who approves my performance measures?
§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?
§ 2522.620 How do I report my performance measures to the Corporation?
§ 2522.630 What must I do if I am not able to meet my performance measures?
§ 2522.640 Under what circumstances may I change my performance measures?
§ 2522.650 What happens if I fail to meet the performance measures included in my grant?

Evaluating Programs: Requirements and Procedures
§ 2522.700 How does evaluation differ from performance measurement?
§ 2522.710 What are my evaluation requirements?
§ 2522.720 How many years must my evaluation cover?
§ 2522.730 How and when do I submit my evaluation to the Corporation?
§ 2522.740 How will the Corporation use my evaluation?
§ 2522.800 How will the Corporation evaluate individual AmeriCorps programs?
§ 2522.810 What will the Corporation do to evaluate the overall success of the AmeriCorps programs?
§ 2522.820 Will information on individual participants be kept confidential?

Subpart F—Program Management Requirements for Grantees

§ 2522.900 What definitions apply to this subpart?
§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?
§ 2522.920 Are there any exceptions to the qualifications requirements?
§ 2522.930 What is an appropriate proficiency test?
§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?
§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?

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.

2522.10 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 nondiscrimination, 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 posses 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]

§ 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 gleaning 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.

2522.200 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.

(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

(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]

§ 2522.205 To whom must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to a participant or staff position for which an individual receives a Corporation grant-funding living allowance, stipend, education award, salary, or other remuneration.

§ 2522.206 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:

(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or

(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

§ 2522.207 What are the procedures I must follow to determine an individual's suitability to serve in a covered position?

In determining an individual's suitability to serve in a covered position, you must follow the procedures in part 2540 of this title.

§ 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 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 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 53752, Sept. 17, 2008].

§ 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:

(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 first 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 53752, Sept. 17, 2008]

§ 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 full-, part-, or reduced part-time basis.

(b) *Early release*. Except as provided in paragraph (c) of this section, a term of service from whih an individual is 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 15 percent of the 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.

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps educational awards.* An individual serving in an approved AmeriCorps position may receive an educational 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 maximum, 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 directly to the Corporation, and may not be included in a State's application for the AmeriCorps program funds distributed by formula, or competition described in §§2521.30 (a)(2) and (a)(3) 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 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 73 FR 53752, Sept. 17, 2008].

§ 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 53752, 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;

(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]

2522.300 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.

§ 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.

§ 2522.340 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 53752, Sept. 17, 2008]

2522.400 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]

§ 2522.440 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]

§ 2522.450 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 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 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* and at *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 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 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 education award a member may earn through serving with your program.

[70 FR 39603, July 8, 2005]

2522.500 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, consistent 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 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 recompeting 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

(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 53752, 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 circumstances 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;

(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 performance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

[70 FR 39603, July 8, 2005]

2522.700 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 recompeting 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;

(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 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]

§ 2522.900 Subpart F—Program Management Requirements for Grantees
§ 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.

Source: 70 FR 39606, July 8, 2005, unless otherwise noted.

§ 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 C.F.R. 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.

§ 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 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.

§ 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.

2523 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?
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. 12501 et seq. 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 nondisplacement 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.

§ 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.

2524 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. 12501 et seq. 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.

§ 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 matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

2525 PART 2525 -- NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

Sec.

2525.10 What is the National Service Trust?
2525.20 Definitions.

Authority: 42 U.S.C. 12601-12604. Source: 59 FR 30710, June 15, 1994, unless otherwise noted.

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation 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.

[64 FR 37414, July 12, 1999]

§ 2525.20 Definitions.

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used in parts 2525 through 2529 of this chapter:

AmeriCorps Education Award. For the purposes of this section, the term *AmeriCorps education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

Approved school-to-work program. The term *approved school-to-work program* means a program that is involved in a federally-approved school-to-work system, as certified by a State, designated local partnership, or other entity that receives a grant under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 *et seq.*).

Cost of attendance. The term *cost of attendance* has the same meaning as in title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

Current educational expenses. The term *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.

Economically disadvantaged youth. For the purposes of this section, the phrase *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. For the purposes of this section, the term *education award* means the financial assistance available under parts 2526 and 2528 of this chapter, including AmeriCorps education awards, Silver Scholar education awards, and Summer of Service education awards.

Educational expenses at a Title IV institution of higher education. The term *educational expenses* means --

(1) Cost of attendance as determined by the institution; or

(2) Other costs at a title IV institution of higher education attributable to a non-title IV educational course as follows:

(i) Tuition and fees normally assessed a student for a course or program of study by the institution, including costs for rental or purchase of any books or supplies required of all students in the same course of study;

(ii) For a student engaged in a course of study by correspondence, only tuition and fees and, if required, books, and supplies;

(iii) For a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(iv) For a student engaged in a work experience under a cooperative education program or course, an allowance for reasonable costs associated with such employment (as determined by the institution).

G.I. Bill approved program. For the purposes of this section, a *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.

Holder. The term *holder* means --

(1) The original lender; or

(2) Any other entity to whom 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. For the purposes of parts 2525 through 2529 of this chapter, the term *institution of higher education* has the same meaning given the term in section 481(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)).

Period of enrollment. Period of enrollment means the period that the title IV institution has established for which institutional charges are generally assessed (i.e., length of the student's course, program, or academic year.)

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to 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 pursuant to section 428B of such Act (20 U.S.C. 1078-2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

Silver Scholar education award. For the purposes of this section, the term Silver Scholar education award means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Silver Scholar position may be eligible.

Summer of Service education award. For the purposes this section, the term Summer of Service education award means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Summer of Service position may be eligible.

Term of service. The term *term of service* means—
(1) For an individual serving in an approved AmeriCorps position, one of the terms of service specified in Sec. 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; and
(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.

2526 PART 2526 -- ELIGIBILITY FOR AN EDUCATION AWARD

Sec.

2526.10 Who is eligible to receive an education award from the National Service Trust?

2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?
2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?
2526.25 Is a participant in an approved Summer of Service or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?

2526.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?
2526.40 What is the time period during which an individual must use an education award?
2526.50 Is there a limit on the total amount of education awards an individual may receive?
2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?
2526.60 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 service?
2526.70 What are the effects of an erroneous certification of successful completion of a term of service.

Authority: 42 U.S.C. 12601-12604, 12606 . Source: 59 FR 30711, June 15, 1994, unless otherwise noted.

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) General. An individual is eligible to receive an education award from the National Service Trust if the organization responsible for the individual's supervision in a national service program certifies that the individual--

(1) Met the applicable eligibility requirements for the approved AmeriCorps position, approved Silver Scholar position, or approved Summer of Service position, as appropriate, in which the individual served;

(2) (i) For an AmeriCorps education award, successfully completed the required term of service in the approved national service position;

(ii) For a partial AmeriCorps education award, 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 Sec. 2522.230(a);

(iii) For a Summer of Service education award, successfully completed the required term of service in a Summer of Service position; or

(iv) For a Silver Scholar education award, successfully completed the required term of service in a Silver Scholar position; and

(3) Is a citizen, national, or lawful permanent resident alien of the United States.

(b) *High school diploma or equivalent.* To use an education award, an individual must --

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (b) of this section relating to high school education, no additional documentation is needed.

(d) *Prohibition on duplicate benefits.* An 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.

(e) *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 other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

[64 FR 37414, July 12, 1999, as amended at 67 FR 45361, July 9, 2002]

§ 2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?

(a) An organization responsible for the supervision of an individual serving in an AmeriCorps State and National position must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation conducted pursuant to Sec. 2522.220(d).

(b) An organization responsible for the supervision of an individual serving in a program other than AmeriCorps State and National must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation that examines whether the individual satisfies all of the following conditions:

(1) Completed the required number of service hours for the term of service;

(2) Satisfactorily performed on assignments, tasks, or projects; and

(3) Met any performance criteria as determined by the program and communicated to the member.

(c) A certification by the organization responsible for the supervision of an individual that the individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances*. A participant in an approved AmeriCorps position who is released prior to completing an approved term of service for compelling personal circumstances in accordance with § 2522.230(a) is eligible for a pro-rated education award if the participant--

(1) Performed satisfactorily prior to being granted a release for compelling personal circumstances; and

(2) Completed at least 15 percent of the originally-approved term of service.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated eduation award?

No. An individual released for any reason prior to completing an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

§ 2526.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?

(a) Except as provided in paragraph (b) of this section, a recipient of an education award who is convicted under pertinent 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 ineligibility periods are --

(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 the Corporation according to the following factors --

(A) Type of controlled substance;

(B) Amount of controlled substance;

(C) Whether firearms or other dangerous weapons were involved in the offense;

(D) Nature and extent of any other criminal record;

(E) Nature and extent of any involvement in trafficking of controlled substances;

(F) Length of time between offenses;

(G) Employment history;

(H) Service to the community;

(I) Recommendations from community members and local officials, including experts in substance abuse and treatment; and

(J) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the ineligibility periods are --

(i) Two years for a first conviction; and

(ii) Two years plus such additional time as the Corporation determines as appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii) (A) through (J) of this section.

(b) (1) If the Corporation determines that an individual who has had his or her eligibility to use the education award suspended pursuant to paragraph (a) of this section 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, the individual's eligibility to use the education award will be restored.

(2) In order for the Corporation to determine that the requirements of paragraph (b)(1) of this section have been met --

(i) The drug rehabilitation program must be recognized as legitimate by appropriate Federal, State or local authorities; and

(ii) The individual's enrollment in or successful completion of the legitimate drug rehabilitation program must be certified by an appropriate official of that program.

[59 FR 30711, June 15, 1994. Redesignated at 64 FR 37415, July 12, 1999]

§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?

No. An individual released for any reason prior to completing an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

§ 2526.40 What is the time period during which an individual may use an education award?

(a) *General requirement.* Unless the Corporation approves an extension in accordance with the requirements of paragraph (b) of this section—

(1) An individual may use an AmeriCorps education award or a Silver Scholar education award within seven years of the date on which the individual successfully completed a term of service in an approved AmeriCorps or Silver Scholar position;

(2) An individual may use a Summer of Service education award within ten years of the date on which the individual successfully completed a term of service in an approved Summer of Service position;

(3) A designated individual who receives a transferred education award in accordance with § 2530.10 may use the transferred education award within ten years of the date on which the individual who transferred the award successfully completed the term of service in an approved AmeriCorps or Silver Scholar position that is the basis of the award.

(b) *Extensions.* In order to receive an extension of the period of availability specified in paragraph (a) of this section for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation may grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps, Summer of Service, or Silver Scholar position during the original period of availability, the Corporation may grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the original period of availability, the Corporation may grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph. In the case of a transferred award, an individual who is unable to use an education award as a result of being too young to enroll in an institution of higher education or other training establishment is not considered to be unavoidably prevented from using the education award.

§ 2526.50 Is there a limit on the total amount of education awards an individual may receive?

(a) *General Limitation.* No individual may receive more than an amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of the value of an education award.* For the purposes of this section, the *value* of an education award is equal to the actual amount of the education award received divided by the amount of a full-time education award in the year the AmeriCorps or Silver

Scholar position to which the award is attributed was approved. Each award received will be considered to have a value between 0 and 1. Although the *amount* of a full-time award as defined in § 2527.10(a) may change, the *value* of a full-time award will always be equal to 1.

(c) *Calculation of aggregate value of awards received.* The aggregate value of awards received is equal to the sum of:

(1) The value of each education award received as a result of successful completion of an approved AmeriCorps position;

(2) The value of each partial education award received as a result of release from an approved AmeriCorps position for compelling personal circumstances;

(3) The value of each education award received as a result of successful completion of a term of service in an approved Silver Scholar position; and

(4) The value of any amount received as a transferred education award, except as provided in § 2530.60(c).

(d) *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 an individual's use.

§ 2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?

The aggregate value of education awards an individual has received will not impact an individual's ability to serve in a subsequent term of service, but will impact the amount of the education award the individual may receive upon successful completion of that term of service. If the award amount offered for the term of service has a value that, when added to the aggregate value of awards previously received, would exceed 2, upon successful completion of the term of service, the individual will only receive that portion of the award having a value for which the individual is eligible pursuant to § 2527.10(g).

§ 2526.60 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 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.

§ 2526.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If the Corporation determines that the certification made by a national service program under § 2526.10(a)(2)(i), (2)(iii), or (2)(iv) is erroneous, the Corporation shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances surrounding the erroneous or incorrect certification.

(b) Nothing in this section shall prohibit the Corporation from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

2527 PART 2527 -- DETERMINING THE AMOUNT OF AN EDUCATION AWARD

Authority: 42 U.S.C. 12601-12606. Source: 64 FR 37415, July 12, 1999, unless otherwise noted.

§ 2527.10 What is the amount of an education award?

(a) *Full-time term of service.* Except as provided in paragraph (g) of this section, the education award for a full-time term of service in an approved AmeriCorps 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 such grant may receive in the aggregate for the award year in which the term of service is approved by the

Corporation.

(b) *Part-time term of service.* Except as provided in paragraph (g), the education award for a part-time term of service in an approved AmeriCorps position of at least 900 hours is equal to one half of the amount of an education award amount for a full-time term of service described in paragraph (a) of this section.

(c) *Reduced part-time term of service.* Except as provided in paragraph (g), the education award for a reduced part-time term of service in an approved AmeriCorps position of fewer than 900 hours is:

(1) An amount equal to the product of:

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) The amount of the education award for a part-time term of service described in paragraph (b) of this section; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-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 originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

(e) *Summer of Service Education Award.* (1) *In general.* The education award for a term of service in an approved Summer of Service position for at least 100 hours is $500.

(2) *Exception.* The Corporation may authorize a Summer of Service education award of $750 if the participant is economically disadvantaged, as verified by the organization or school operating the Summer of Service program.

(f) *Silver Scholar Education Award.* Except as provided in paragraph (g) of this section,

the education award for a term of service in an approved Silver Scholar position for at least 350 hours is $1,000.

(g) *Calculating discounted education award amount.* To ensure that an individual receives no more than the aggregate value of two awards, as determined pursuant to § 2526.50, the discounted amount an individual is eligible to receive is determined by the following formula:

(2−aggregate value of awards the individual has received) × (amount of a full-time education award in the year the position is approved)

2528 PART 2528 -- USING AN EDUCATION AWARD

Sec.
2528.10 For what purposes may an education award be used?
2528.20 What steps are necessary to use an education award to repay a qualified student loan?
2528.30 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?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?
2528.60 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill approved program?
2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill approved program?
2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?

Authority: 42 U.S.C. 12601-12604. Source: 64 FR 37415, July 12, 1999, unless otherwise noted.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used --

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current educational expenses at an institution of higher education in accordance with §§ 2528.30 through 2528.50;

(3) To pay expenses incurred in enrolling in a G.I. Bill approved program, in accordance with §§ 2528.60-80.

(b) *Multiple uses.* An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002]

§ 2528.20 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, the Corporation must receive --

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 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 an amount from an education award to pay all or part of the current educational expenses at an institution of higher education, the Corporation must receive --

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, 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 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 the Corporation 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 the Corporation of the unused portion of the education award;

(iv) Individuals using education awards to pay for the current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance and other educational expenses; and

(B) The 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 the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education 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.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002]

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between --

(a) The individual's cost of attendance for that period of enrollment, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The sum of --

(1) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act; and

(2) The individual's veterans' education benefits as defined under section 480(c) of the Higher Education Act (20 U.S.C. 1087vv(c)).

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an institution of higher education that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation in an amount determined under that institution's published refund requirements.

(2) If an institution for higher education does not have a published refund policy, the institution must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation 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.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002]

§ 2528.60 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 for this purpose, you must have received an education award for successfully completing a term in an approved AmeriCorps position, approved Summer of Service position, or approved Silver Scholar position, in which you enrolled on or after October 1, 2009.

§ 2528.70 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 an amount from an education award for this

purpose, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that the individual meets the criteria in § 2528.60; and

(3) Information from the educational institution or training establishment as requested by the Corporation, 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 the Corporation of the unused portion of the education award.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution or establishment and notify the individual of the payment.

§ 2528.80 What happens if an individual for whom the Corporation 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 the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, the approved educational institution or training establishment that receives a disbursement of education award funds from the Corporation must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation 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.

2529 PART 2529 -- PAYMENT OF ACCRUED INTEREST

Sec.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?
2529.20 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?
2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which the individual has obtained forbearance?

Authority: 42 U.S.C. 12601-12606. Source: 64 FR 37417, July 12, 1999, unless otherwise noted.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?

(a) *Eligibility.* The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if --

(1) The individual successfully completes a term of service in an approved AmeriCorps position or approved Silver Scholar position; and (2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount.* The percentage of accrued interest that the Corporation will pay is the lesser of --

(1) The product of --

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and (2) 100.

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation.* The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

§ 2529.20 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 individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which 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 the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

2530 PART 2530 – TRANSFER OF EDUCATION AWARDS

2530.10 Under what circumstances may an individual transfer an education award?

2530.20 For what purposes may a transferred award be used?

2530.30 What steps are necessary to transfer an education award?

2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

2530.70 Is a designated individual required to accept a transferred education award?

2530.80 Under what circumstances is a transfer revocable?

2530.85 What steps are necessary to revoke a transfer?

2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

Authority: 42 U.S.C. 12601-12606

§ 2530.10 Under what circumstances may an individual transfer an education award?

An individual may transfer an education award if—

(a) The individual enrolled in an approved AmeriCorps State and National position or approved Silver Scholar position on or after October 1, 2009;

(b) The individual was age 55 or older on the day the individual commenced the term of service in an approved AmeriCorps State and National position or in approved Silver Scholar position;

(c) The individual successfully completed a term of service in an approved AmeriCorps State and National position or an approved Silver Scholar position;

(d) The award the individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2526.40(a);

(e) The individual designated to receive the transferred award is the transferring individual's child, grandchild, or foster child; and

(f) The individual designated to receive the transferred award is a citizen, national, or lawful permanent resident alien of the United States.

§ 2530.20 For what purposes may a transferred award be used?

A transferred award may be used by a designated individual to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2528.10.

§ 2530.30 What steps are necessary to transfer an education award?

(a) *Request for Transfer.* Before transferring an award to a designated individual, the Corporation must receive a request from the transferring individual, including—

(1) The individual's written authorization to transfer the award, the year in which the award was earned, and the specific amount of the award to be transferred;

(2) Identifying information for the individual designated to receive the transferred award;

(3) A certification that the transferring individual meets the requirements of paragraphs (a) through (c) of § 2530.10; and

(4) A certification that the designated individual is the child, grandchild, or foster child of the transferring individual.

(b) *Notification to Designated Individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will contact the designated individual to notify the individual of the proposed transfer, confirm the individual's identity, and give the individual the opportunity to accept or reject the transferred award.

(c) *Acceptance by Designated Individual.* To accept an award, a designated individual must certify that the designated individual is the child, grandchild, or foster child of the transferring individual and that the designated individual is a citizen, national, or lawful permanent resident alien of the United States. Upon receipt of the designated individual's acceptance, the Corporation will create or permit the creation of an account in the National Service Trust for the designated individual, if an account does not already exist, and the accepted amount will be deducted from the transferring individual's account and credited to the designated

individual's account.

(d) *Timing of transfer.* The Corporation must receive the request from the transferring individual prior to the date the award expires.

§ 2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

(a) *General Limitation.* For each award an individual earns as a result of successfully completing a single term of service, an individual may transfer all or part of the award to a single designated individual. An individual may not transfer a single award attributable to successful completion of a single term of service to more than one designated individual.

(b) *Re-transfer.* If a designated individual rejects a transferred award in full, or the Corporation otherwise determines that a transfer was revoked for good cause in accordance with § 2530.80(c), the transferring individual may designate another individual to receive the transferred award.

§ 2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

Consistent with § 2526.50, no individual may receive more than an amount equal to the value of two full-time education awards. If the sum of the value of the requested transfer plus the aggregate value of education awards a designated individual has previously received would exceed the aggregate value of two full-time education awards, as determined pursuant to § 2526.50(b), the designated individual will be deemed to have rejected that portion of the award that would result in the excess. If a designated individual has already received the aggregate value of two full-time education awards, the individual may not receive a transferred education award, and the designated individual will be deemed to have rejected the award in full.

§ 2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

(a) *Impact on Transferring Individual.* Pursuant to § 2526.50, an award is considered to be

received at the time it becomes available for an individual'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 Individual.* For the purposes of determining the value of the transferred education award under § 2526.50, a designated individual will be considered to have received a value equal to the amount accepted divided by the amount of a full-time award in the year the transferring individual's position was approved.

(c) *Result of revocation on award value.* If the transferring individual revokes, in whole or in part, a transfer, the value of the education award considered to have been received by the designated individual for purposes of § 2526.50 will be reduced accordingly.

§ 2530.70 Is a designated individual required to accept a transferred education award?

(a) *General Rule.* A designated individual is not required to accept a transferred education award, and may reject an award in whole or in part.

(b) *Result of rejection in full.* If the designated individual rejects a transferred award in whole, the amount is credited to the transferring individual's account in the National Service Trust, and may be transferred to another individual, or may be used by the transferring individual for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Result of rejection in part.* If the designated individual rejects a transferred award in part, the rejected portion is credited to the transferring individual's account in the National Service Trust, and may be used by the transferring individual's for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a). An individual may not re-transfer the rejected portion of the award to another individual.

§ 2530.80 Under what circumstances is a transfer revocable?

(a) *Revocation.* An individual may revoke a transfer at any time and for any reason prior to the award's use by the designated individual.

(b) *Use of Award.* Upon revocation, the amount revoked will be deducted from the designated individual's account and credited to the transferring individual's account. The transferring individual may use the revoked transferred education award for any of the purposes described in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Re-transfer.* Generally, an individual may not re-transfer an award to another individual after revoking the same award from the original designated individual. The Corporation may approve re-transfer of an award for good cause, including cases in which the original designated individual was unavoidably prevented from using the award, as demonstrated by the individual transferring the award.

§ 2530.85 What steps are necessary to revoke a transfer?

(a) *Request for revocation.* Before revoking a transfer, the transferring individual must submit a request to the Corporation that includes —

(1) The individual's written authorization to revoke the award;

(2) The year in which the award was earned;

(3) The specific amount to be revoked; and

(4) The identity of the designated individual.

(b) *Credit to transferring individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will deduct the amount specified in the transferring individual's request from the designated individual's account and credit the amount to the account of the transferring individual, except as provided in paragraph (c) of this section. The Corporation will notify the transferring individual of the amount revoked.

(c) *Used awards.* A revocation may only apply to that portion of the transferred award that has not been used by the designated individual. If the designated individual has used the entire transferred amount prior to the date the Corporation receives the revocation request, no amount will be returned to the transferring individual. An amount is considered to be used when it is disbursed from the National Service Trust, not when a request is received to use an award.

(d) *Notification to designated individual.* The Corporation will notify the designated individual of the amount being revoked as of the date of the Corporation's receipt of the revocation request.

(e) *Timing of revocation.* The Corporation must receive the request to revoke the transfer from the transferring individual prior to the award's expiration ten years from the date the award was originally earned.

§ 2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

No, an individual must have successfully completed a term of service in an approved AmeriCorps position or Silver Scholar position to be eligible for the payment of accrued interest under Part 2529.

2531 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]

§ 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]

2532 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. Other innovative and model programs.

Authority: 42 U.S.C. 12501 et seq. Source: 59 FR 13806, Mar. 23, 1994, unless otherwise noted.

§ 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.

(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 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.

(c) Application procedures, selection criteria, timing, and other requirements will be announced in the FEDERAL REGISTER.

2533 PART 2533 -- TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

Authority: 42 U.S.C. 12657 et seq.

§ 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 nonprofit 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 nonprofit 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.

2534 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. Application procedures, selection criteria, timing and other requirements will be announced in the FEDERAL REGISTER.

[59 FR 13808, Mar. 23, 1994]

§ 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]

2540 PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

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

§ 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 To whom must I apply suitability criteria relating to criminal history?
§ 2540.201 What suitability criteria must I apply to covered positions?
§ 2540.202 What two search components of the National Service Criminal History Check must I satisfy to determine an individual's suitability to serve in a covered position?
§ 2540.203 When must I conduct a State criminal registry check and a NSOPR check on an individual in a covered position?
§ 2540.204 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?
§ 2540.205 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?

§ 2540.206 Under what circumstances may I follow alternative procedures in conducting a State criminal registry check for a covered position?
§ 2540.207 Is an individual who refuses to consent to a State criminal registry check, or who makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history, eligible to serve in a covered position?
§ 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 programs eligible for family and medical leave?
§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?

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?

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; 42 U.S.C. 5065

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

2540.100 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.

(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 18138, Apr. 14, 1998]

2540.200 Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants § 2540.200 To whom must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to an individual applying for, or serving in, a position for which an individual receives a Corporation grant-funded living allowance, stipend, education award, salary, or other remuneration.

§ 2540.201 What suitability criteria must I apply to a covered position?

An individual is ineligible to serve in a covered position if the individual:

(a) Is registered, or required to be registered, on a State sex offender registry or the National Sex Offender Registry; or

(b) Has been convicted of murder, as defined in section 1111 of title 18, United States Code.

§ 2540.202 What two search components of the National Service Criminal History Check must I satisfy to determine an individual's suitability to serve in a covered position?

Unless the Corporation approves an alternative screening protocol, in determining an individual's suitability to serve in a covered position, you are responsible for conducting and documenting a National Service Criminal History Check, which consists of the following two search components:

(a) State criminal registry search. A search (by name or fingerprint) of the State criminal registry for the State in which your program operates and the State in which the individual resides at the time of application; and

(b) National Sex Offender Public Registry. A name-based search of the Department of Justice (DOJ) National Sex Offender Public Registry (NSOPR).

§ 2540.203 When must I conduct a State criminal registry check and a National Sex Offender Public Website check on an individual in a covered position?

(a) The State criminal registry check must be conducted on Foster Grandparents, Senior Companions, and AmeriCorps State and National participants and grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities, who enroll in, or are hired by, your program after November 23, 2007. For all other covered individuals, the State criminal registry check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

(b) The National Sex Offender Public Website check must be conducted on an individual who is serving, or applies to serve, as a Foster Grandparent, Senior Companion, or AmeriCorps State and National participant or grant-funded staff with recurring access to children, persons age 60 or older, or individuals with disabilities on or after November 23, 2007. For all other covered individuals, the National Sex Offender Public Website check must be conducted on an individual who enrolls in, or is hired by, your program on or after October 1, 2009.

(c) For an individual who serves consecutive terms of service in your program with a break in service of no more than 30 days, no additional check is required after the first term.

§ 2540.204 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?

You are responsible for following these procedures:

(a) Verify the individual's identity by examining the individual's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization for the State criminal registry check and the appropriate sharing of the results of that check within the program from the individual (but not for the NSOPR check);

(c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the individual's criminal history, if any;

(d) Provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a result before action is taken to exclude the individual from the position;

(e) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant; and

(f) Ensure that an individual, for whom the results of a required State criminal registry check are pending, is not permitted to have access to children, persons age 60 and older, or individuals with disabilities without being accompanied by an authorized program representative who has previously been cleared for such access.

§ 2540.205 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?

You must:

(a) Document in writing that you verified the identity of the individual in a covered position by examining the individual's government-issued photo identification card, and that you conducted the required checks for the covered position; and

(b) Maintain the results of the National Service Criminal History check (unless precluded by State law) and document in writing that you considered the results in selecting the individual.

§ 2540.206 Under what circumstances may I follow alternative procedures in conducting a State criminal registry check for a covered position?

(a) FBI fingerprint-based check. If you conduct and document a fingerprint-based criminal history check through the Federal Bureau of Investigation, you will be deemed to have satisfied the State criminal registry check requirement and do not need separate approval by the Corporation.

(b) Name-based search. If you conduct and document a name-based criminal history check through a source other than the FBI that includes a check of the criminal records repository in the State in which your program is operating, as well as in the State in which the applicant lives, you will be deemed to have satisfied the State criminal registry check requirement and do not need separate approval by the Corporation.

(c) Alternative search approval. If you demonstrate that you are prohibited or otherwise precluded under State law from complying with a Corporation requirement relating to criminal history checks or that you can obtain substantially equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol that you submit in writing to the Corporation's Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it:

(1) Verifies the identity of the individual; and

(2) Includes a search of an alternative criminal database that is sufficient to identify the existence, or absence of, criminal offenses.

§ 2540.207 Is an individual who refuses to consent to a State criminal registry check, or who makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history, eligible to serve in a covered position?

An individual who refuses to consent to a State criminal registry check, or who makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history, is not eligible to serve in a covered position.

§ 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.

§ 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 employed 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 53752, 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 53752, 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 participants 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 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 nondisplacement 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.

2540.300 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.

2540.400 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.

2540.500 Subpart E—Restrictions on Use of National Service Insignia § 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.
[73 FR 53752, Sept. 17, 2008]

2540.600 Subpart F— False or Misleading Statements § 2540.600 What definitions apply to this subpart?

You. For this subpart, *you* refers to a participant in a national service program.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

§ 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.

[73 FR 53752, Sept. 17, 2008]

2541 PART 2541 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A -- General

Sec.

2541.10 Purpose and scope of this part.
2541.20 Scope of subpart.
2541.30 Definitions.
2541.40 Applicability.
2541.50 Effect on other issuances.
2541.60 Additions and exceptions.

Subpart B -- Pre-Award Requirements

2541.100 Forms for applying for grants.
2541.110 State plans.
2541.120 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C -- Post Award Requirements

2541.200 Standards for financial management systems.
2541.210 Payment.

2541.220 Allowable costs.
2541.230 Period of availability of funds.
2541.240 Matching or cost sharing.
2541.250 Program income.
2541.260 Non-Federal audit.

Subpart D -- Changes, Property and Subawards

2541.300 Changes.
2541.310 Real property.
2541.320 Equipment.
2541.330 Supplies.
2541.340 Copyrights.
2541.350 Subawards to debarred and suspended parties.
2541.360 Procurement.
2541.370 Subgrants.

Subpart E -- Reports, Records, Retention and Enforcement

2541.400 Monitoring and reporting program performance.
2541.410 Financial reporting.
2541.420 Retention and access requirements for records.
2541.430 Enforcement.
2541.440 Termination for convenience.

Subpart F -- After the Grant Requirements

2541.500 Closeout.
2541.510 Later disallowances and adjustments.
2541.520 Collection of amounts due.

Authority: 42 U.S.C. 4950 et seq. and 12501 et seq. Source: 59 FR 41598, Aug. 12, 1994, unless otherwise noted.

2541.10 Subpart A -- General § 2541.10 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 2541.20 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 2541.30 Definitions.

The following definitions apply to terms used in this part and part 2542 of this chapter.

Accrued expenditures. The term *accrued expenditures* means the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income. The term *accrued income* means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost. The term *acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements. The term *administrative requirements* means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency. The term *awarding agency* means:

(1) With respect to a grant, the Federal agency; and

(2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions. The term *cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation,

Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract. The term *contract* means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing (or *matching*). The term *cost sharing* (or *matching*) means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract. The term *cost-type contract* means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment. The term *equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment mentioned in this definition.

Expenditure report. The term *expenditure report* means:

(1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);

(2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government. The term *federally recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government. The term *government* means a State or local government or a federally recognized Indian tribal government.

Grant. The term *grant* means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee. The term *grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government. The term *local government* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations. The term *obligations* means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB. The term *OMB* means the United States Office of Management and Budget.

Outlays (expenditures). The term *outlays* (expenditures) means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method. The term *percentage of completion method* refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval. The term *prior approval* means documentation evidencing consent prior to incurring specific cost.

Real property. The term *real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share. The term *share,* when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted -- not the value of third-party in-kind contributions.

State. The term *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

Subgrant. The term *subgrant* means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

Subgrantee. The term *subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies. The term *supplies* means all tangible personal property other than "equipment" as defined in this part.

Suspension. The term *suspension* means, depending on the context, either --

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant; or

(2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 (3 CFR, 1986 Comp., p. 189) to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination. The term *termination* means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does not include --

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions. The term *third party in-kind contributions* means property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis. The term *unliquidated obligations for reports prepared on a cash basis* means the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance. The term *unobligated balance* means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 2541.40 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 2541.60, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 357) (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583 -- the Secretary's discretionary grant program) and titles I-III of the Job Training Partnership Act of 1982 (29 U.S.C. 1501 et seq.) and under the Public Health Services Act (42 U.S.C. 201 et seq.), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act (42 U.S.C. 301 et seq.):

(i) Aid to Needy Families with Dependent Children (title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act (42 U.S.C. 1751 et seq.):

(i) School Lunch (section 4 of the Act);

(ii) Commodity Assistance (section 6 of the Act);

(iii) Special Meal Assistance (section 11 of the Act);

(iv) Summer Food Service for Children (section 13 of the Act); and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act); and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section.

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits.

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children).

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated in § 2541.40(a) (3) through (8) are subject to subpart E of this part.

§ 2541.50 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 2541.60.

§ 2541.60 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

2541.100 Subpart B -- Pre-Award Requirements § 2541.100 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 2541.110 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372 (3 CFR, 1982 Comp., p. 197), "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions;

(2) Repeat the assurance language in the statutes or regulations; or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: New or revised Federal statutes or regulations; or a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 2541.120 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance; or

(2) Is not financially stable; or

(3) Has a management system which does not meet the management standards set forth in this part; or

(4) Has not conformed to terms and conditions of previous awards; or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

2541.200 Subpart C -- Post-Award Requirements § 2541.200 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to --

(1) Permit preparation of reports required by this part and the statutes authorizing the grant; and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 2541.210 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless --

(i) The grantee or subgrantee has failed to comply with grant award conditions; or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 2541.410(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 2541.220 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for --

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles:

For the costs of a	**Use the principles in--**

State, local or Indian tribal government Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-87. OMB Circular A-122.
Education institutions For-profit organization other than a Hospital and an organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-21. 48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 2541.230 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 2541.240 Matching or cost sharing.

(a) *Basic rule; costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions* -- (1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 2541.250, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 2541.250(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records*. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions*. (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee); or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind

contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services* -- (1) *Volunteer services*. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations*. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space*. (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land*. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures*. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards*. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated

equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 2541.220, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition*. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property*. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 2541.250 Program income.

(a) *General*. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income*. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income*. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues*. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties*. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are

specifically identified in the grant agreement or Federal agency regulations as program income. (See § 2541.340)

(f) *Property*. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 2541.310 and 2541.320.

(g) *Use of program income*. Program income shall be deducted from outlays which may be both Federal and non-Federal as described in paragraphs (g)(1) and (2) of this section, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction*. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition*. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching*. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period*. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 2541.260 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which

expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 2541.360 shall be followed.

[59 FR 41598, Aug. 12, 1994, as amended at 62 FR 45939, 45947, Aug. 29, 1997]

2541.300 Subpart D -- Changes, Property and Subawards § 2541.300 Changes.

(a) *General.* Grantees and subgrantees are permitted to re budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 2541.220) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* -- (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 2541.360 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 2541.220) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 2541.310 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 2541.320 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 2541.250(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow paragraph (e) of this section.

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 2541.330 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 2541.340 Copyrights.

The Federal awarding agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 2541.350 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 2541.360 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) of this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when --

(i) The employee, officer or agent;

(ii) Any member of his immediate family;

(iii) His or her partner; or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only --

(i) After a determination that no other contract is suitable; and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities); and

(ii) Violations of the grantee's or sub-grantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified in this paragraph (b)(12)(ii) will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this section. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business;

(ii) Requiring unnecessary experience and excessive bonding;

(iii) Noncompetitive pricing practices between firms or between affiliated companies;

(iv) Noncompetitive awards to consultants that are on retainer contracts;

(v) Organizational conflicts of interest;

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed* -- (1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition

threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 2541.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that

minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 2541.220). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third- party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[59 FR 41598, Aug. 12, 1994, as amended at 60 FR 19639, 19646, Apr. 19, 1995]

§ 2541.370 Subgrants.

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 2541.400 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) § 2541.100;

(2) § 2541.110;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 2541.210; and

(4) § 2541.500.

2541.400 Subpart E -- Reports, Records, Retention and Enforcement § 2541.400 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) *Site visits.* Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 2541.410 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies; or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.* -- (1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report.* -- (1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the

Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement.* -- (1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in paragraph (b)(3) of this section.

(e) *Outlay report and request for reimbursement for construction programs.* -- (1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in paragraph (d) of this section, instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in paragraph (b)(3) of this section.

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by paragraphs (b) (3) and (4) of this section.

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in paragraph (d) of this section.

(iii) The Federal agency may substitute the Financial Status Report specified in paragraph (b) of this section for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by paragraph (b)(2) of this section.

§ 2541.420 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement; or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 2541.360(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*. -- (1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the

retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records.* -- (1) *Records of grantees and subgrantees*. The awarding agency, the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

[59 FR 41598, Aug. 12, 1994, as amended at 73 FR 53752, Sept. 17, 2008]

§ 2541.430 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) Withhold further awards for the program; or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable; and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 2541.350).

§ 2541.440 Termination for convenience.

Except as provided in § 2541.430 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the

portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 2541.430 or paragraph (a) of this section.

2541.500 Subpart F -- After the Grant Requirement § 2541.500 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this time frame. These may include but are not limited to:

(1) Final performance or progress report;

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable);

(3) Final request for payment (SF-270) (if applicable);

(4) Invention disclosure (if applicable);

(5) Federally-owned property report. In accordance with § 2541.320(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 2541.510 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 2541.420;

(d) Property management requirements in §§ 2541.3120 and 2541.320; and

(e) Audit requirements in § 2541.410.

§ 2541.520 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the grantee; or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

2542 PART 2542 -- GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A -- General

Sec.
2542.10 Purpose.
2542.20 Definitions.
2542.30 Coverage.
2542.40 Policy.

Subpart B -- Effect of Action

2542.100 Debarment or suspension.
2542.110 Ineligible persons.
2542.120 Voluntary exclusion.
2542.130 Exception provision.

2542.140 Continuation of covered transactions.
2542.150 Failure to adhere to restrictions.

Subpart C -- Debarment

2542.200 General.
2542.210 Causes for debarment.
2542.220 Procedures.
2542.230 Investigation and referral.
2542.240 Notice of proposed debarment.
2542.250 Opportunity to contest proposed debarment.
2542.260 Debarring official's decision.
2542.270 Settlement and voluntary exclusion.
2542.280 Period of debarment.
2542.290 Scope of debarment.

Subpart D -- Suspension

2542.300 General.
2542.310 Causes for suspension.
2542.320 Procedures.
2542.330 Notice of suspension.
2542.340 Opportuntiy to contest suspension.
2542.350 Suspending official's decision.
2542.360 Period of suspension.
2542.370 Scope of suspension.

Subpart E -- Responsibilities of GSA, Agency and Participants

2542.400 GSA responsibilities.
2542.410 Corporation responsibilities.
2542.420 Participants' responsibilities.

Subpart F -- Drug-Free Workplace Requirements (Grants)

2542.500 Purpose.
2542.510 Definitions.
2542.520 Coverage.
2542.530 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
2542.540 Effect of violation.
2542.550 Exception provision.
2542.560 Certification requirements and procedures.

2542.570 Reporting of and employee sanctions for convictions of criminal drug offenses.

Appendix A to Part 2542 -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions
Appendix B to Part 2542 -- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions
Appendix C to Part 2542 -- Certification Regarding Drug-Free Workplace Requirements

Authority: 42 U.S.C. 4951 et seq., 5060 and 12644; E.O. 12549, 51 FR 6370, February 21, 1986 (3 CFR, 1986 Comp., p. 189). Source: 59 FR 41614, Aug. 12, 1994, unless otherwise noted.

Cross Reference: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and the governmentwide common rule published at 53 FR 19161, May 26, 1988, and 60 FR 33036, June 26, 1995.

2542.10 Subpart A – General § 2542.10 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 2542.20), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by --

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33063, June 26, 1995]

§ 2542.20 Definitions.

The following definitions apply to this part:

Adequate evidence. The term *adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. The term *agency* means any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The term *civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. The term *debarment* means an action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

Debarring official. The term *debarring official* means an official authorized to impose debarment. The debarring official is either:

(1) The agency head; or

(2) An official designated by the agency head.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. The term *ineligible* means excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

Notice. The term *notice* means a written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. The term *participant* means any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. The term *person* means any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. The term *preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. The term *principal* means an officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are principal investigators.

Proposal. The term *proposal* means a solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. The term *respondent* means a person against whom a debarment or suspension action has been initiated.

State. The term *state* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. The term *suspending official* means an official authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

Suspension. The term *suspension* means an action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

Voluntary exclusion (or) *voluntarily excluded.* The term *voluntary exclusion* (or) *voluntarily excluded* means a status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[59 FR 41614, Aug. 12, 1994, as amended at 60 FR 33041, 33063, June 26, 1995]

§ 2542.30 Coverage.

(a) The regulations in this part apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of the regulations in this part such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of the regulations in this part, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(*3*) *Exceptions.* The following transactions are not covered:

(*i*) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(*ii*) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations,

foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(*iii*) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(*iv*) Federal employment;

(*v*) Transactions pursuant to national or agency-recognized emergencies or disasters;

(*vi*) Incidental benefits derived from ordinary governmental operations; and

(*vii*) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under this part will apply. Subpart B, "Effect of Action," § 2542.50, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 2542.30(a). Sections 2542.200 "Scope of debarment," and 2542.280, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[59 FR 41614, Aug. 12, 1994, as amended at 60 FR 33041, 33063, June 26, 1995]

§ 2542.40 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and this part, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in this part.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

2542.100 Subpart B -- Effect of Action § 2542.100 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 2542.130.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 2542.30(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for --

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041, 33063, June 26, 1995]

§ 2542.110 Ineligible persons.

Persons who are ineligible, as defined in § 2542.20, are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 2542.120 Voluntary exclusion.

Persons who accept voluntary exclusions under § 2542.270 are excluded in accordance with the terms of their settlements. Corporation shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 2542.130 Exception provision.

The Corporation may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 2542.100. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 2542.410(a).

[60 FR 33041, 33063, June 26, 1995]

§ 2542.140 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in § 2542.130.

[60 FR 33041, 33063, June 26, 1995]

§ 2542.150 Failure to adhere to restrictions.

(a) Except as permitted under § 2542.130 or § 2542.140, a participant shall not knowingly do business under a covered transaction with a person who is --

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See Appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33063, June 26, 1995]

2542.200 Subpart C -- Debarment § 2542.200 General.

The debarring official may debar a person for any of the causes in § 2542.210, using procedures established in §§ 2542.220 through 2542.260. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 2542.210 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 2542.200 through 2542.260 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of the Governmentwide debarment and suspension (nonprocurement) regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 2542.130 or § 2542.140;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 2542.270 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 2542.530 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 2542.220 Procedures.

The Corporation shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 2542.230 through 2542.260.

§ 2542.230 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 2542.240 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 2452.210 for proposing debarment;

(d) Of the provisions of §§ 2542.230 through 2542.260, and any other Corporation procedures, if applicable, governing debarment decision making; and

(e) Of the potential effect of a debarment.

§ 2542.250 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 2542.260 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of

any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 2542.130.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 2542.270 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, the Corporation may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E of this part).

§ 2542.280 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (see § 2542.210(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 2542.230 through 2542.260 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 2542.290 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under this part constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 2542.230 through 2542.260).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

2542.300 Subpart D – Suspension § 2542.300 General.

(a) The suspending official may suspend a person for any of the causes in § 2542.310 using procedures established in §§ 2542.320 through 2542.350.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 2542.320; and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 2542.310 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 2542.300 through 2542.350 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 2542.300(a); or

(2) That a cause for debarment under § 2542.300 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 2542.320 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* The Corporation shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§ 2541.330 through 2542.350.

§ 2542.330 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 2542.310 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 2542.330 through 2542.350 and any other Corporation procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 2542.340 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 2542.350 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 2542.280(c) for reasons for reducing the period or scope of debatement or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any agency. The decision shall be rendered in accordance with the following provisions.

(a) *No additional proceedings necessary.* In actions: Based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 2542.360 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 2542.370 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 2542.290) except that the procedures of §§ 2542.320 through 2542.350 shall be used in imposing a suspension.

2542.400 Subpart E -- Responsibilities of GSA, Agency and Participants § 2542.400 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and this part, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 2542.410 Corporation responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which the Corporation has granted exceptions under § 2542.130 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 2542.400(b) and of the exceptions granted under § 2542.130 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded.

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 2542.420 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A of this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals. Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B of this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they

determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants.

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to Corporation if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

2542.500 Subpart F -- Drug-Free Workplace Requirements (Grants) § 2542.500 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) by requiring that --

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR part 9, subpart 9.4, part 23, subpart 23.5, and part 52, subpart 52.2.

§ 2542.510 Definitions.

(a) Except as amended in this section, the definitions of § 2542.20 apply to this subpart.

(b) For purposes of this subpart --

(1) *Controlled substance.* The term *controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction.* The term *conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute.* The term *criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace.* The term *drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited

from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee.* (i) The term *employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(A) All direct charge employees;

(B) All indirect charge employees, unless their impact or involvement is insignificant to the performance of the grant; and

(C) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

(ii) This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency (or agency).* The term *federal agency (or agency)* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant.* The term *grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee.* The term *grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual.* The term *individual* means a natural person;

(10) *State.* The term *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 2542.520 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 2542.530 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that --

(a) The grantee has made a false certification under § 2542.560;

(b) With respect to a grantee other than an individual --

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A) (a)-(g) and/or (B) of the certification (Alternate I in Appendix C of this part); or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace; or

(c) With respect to a grantee who is an individual --

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II of Appendix C of this part); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 2542.540 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 2542.520, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see § 2542.280(a)(2)).

§ 2542.550 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 2542.560 Certification requirements and procedures.

(a) (1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C of this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d) (1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each

Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e) (1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 2542.570 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted:

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include

the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

Appendix A to Part 2542 -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33063, June 26, 1995]

Appendix B to Part 2542 -- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9,

subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion -- Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33063, June 26, 1995]

Appendix C to Part 2542 -- Certification Regarding Drug-Free Workplace Requirements Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. § 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub recipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant: Place of Performance (Street address, city, county, state, zip code) _____ _____ _____

Check [ ] if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

2543 PART 2543 -- GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A -- General

Sec.

2543.1 Purpose.
2543.2 Definitions.
2543.3 Effect on other issuances.
2543.4 Deviations.
2543.5 Subawards.

Subpart B -- Pre-Award Requirements

2543.10 Purpose.
2543.11 Pre-award policies.
2543.12 Forms for applying for Federal assistance.
2543.13 Debarment and suspension.
2543.14 Special award conditions.
2543.15 Metric system of measurement.
2543.16 Resource Conservation and Recovery Act.
2543.17 Certifications and representations.

Subpart C -- Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

2543.20 Purpose of financial and program management.
2543.21 Standards for financial management systems.
2543.22 Payment.
2543.23 Cost sharing or matching.
2543.24 Program income.
2543.25 Revision of budget and program plans.
2543.26 Non-Federal audits.
2543.27 Allowable costs.
2543.28 Period of availability of funds.

PROPERTY STANDARDS

2543.30 Purpose of property standards.
2543.31 Insurance coverage.
2543.32 Real property.
2543.33 Federally-owned and exempt property.
2543.34 Equipment.
2543.35 Supplies and other expendable property.
2543.36 Intangible property.
2543.37 Property trust relationship.

PROCUREMENT STANDARDS

2543.40 Purpose of procurement standards.
2543.41 Recipient responsibilities.
2543.42 Codes of conduct.
2543.43 Competition.
2543.44 Procurement procedures.
2543.45 Cost and price analysis.
2543.46 Procurement records.
2543.47 Contract administration.
2543.48 Contract provisions.

REPORTS AND RECORDS

2543.50 Purpose of reports and records.
2543.51 Monitoring and reporting program performance.
2543.52 Financial reporting.
2543.53 Retention and access requirements for records.

TERMINATION AND ENFORCEMENT

2543.60 Purpose of termination and enforcement.
2543.61 Termination.
2543.62 Enforcement.

Subpart D -- After-the-Award Requirements

2543.70 Purpose.
2543.71 Closeout procedures.
2543.72 Subsequent adjustments and continuing responsibilities.
2543.73 Collection of amounts due.

Subpart E -- Statutory Compliance

2543.80 Contract provisions.
2543.81 Equal employment opportunity.
2543.82 Copeland "Anti-Kickback" Act.
2543.83 Davis-Bacon Act.
2543.84 Contract Work Hours and Safety Standards Act.
2543.85 Rights to inventions made under contract or agreement.
2543.86 Clean Air Act and the Federal Water Pollution Control Act.
2543.87 Byrd anti-lobbying amendment.
2543.88 Debarment and suspension.

Authority: 42 U.S.C. 12501 et seq. Source: 60 FR 13055, Mar. 10, 1995, unless otherwise noted.

2543.1 Subpart A – General § 2543.1 Purpose.

This Circular establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in Sections 2543.4, and 2543.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 2543.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs § 2543.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research

institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 2543.3 Effect on other issuances.

For awards subject to this Circular, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Circular shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section § 2543.4.

§ 2543.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this Circular when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Circular shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 2543.5 Subawards.

Unless sections of this Circular specifically exclude subrecipients from coverage, the provisions of this Circular shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 53 FR 8034.

2543.10 Subpart B -- Pre-Award Requirements § 2543.10 Purpose.

Sections § 2543.11 through § 2543.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 2543.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 2543.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single

Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 2543.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 2543.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this Circular,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 2543.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant

inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 2543.16 Resource Conservation and Recovery Act.

Under the Act Resource Conservation and Recovery Act (42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254).

Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 2543.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

2543.20 Subpart C -- Post-Award Requirements Financial and Program Management § 2543.20 Purpose of financial and program management.

Sections 2543.21 through 2543.25 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 2543.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 2543.51. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual

accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business With the United States."

§ 2543.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other

means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 2543.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless:

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements, or

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless:

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this Circular, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF-270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 2543.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this Circular, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation, or.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching, or.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 2543.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) below, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 2543.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. (See § 2543.28 through § 2543.36.)

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 2543.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any

reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever (1), (2) or (3) apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Section § 2543.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 2543.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

[60 FR 13055, Mar. 10, 1995, as amended at 62 FR 45939, 45947, Aug. 29, 1997]

§ 2543.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 2543.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards § 2543.30 Purpose of property standards.

Sections 2543.31 through 2543.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 2543.31 through § 2543.37.

§ 2543.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 2543.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 2543.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821,

"Improving Mathematics and Science Education in Support of the National Education Goals"). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 2543.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project; then

(2) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant

funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 2543.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 2543.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the

research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (*e.g.,* laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph § 2543.34 (g).

[60 FR 13055, Mar. 10, 1995, as amended at 65 FR 53609, Sept. 5, 2000]

§ 2543.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS § 2543.40 Purpose of procurement standards.

Sections § 2543.41 through § 2543.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 2543.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 2543.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 2543.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 2543.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items,

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government, and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 2543.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 2543.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 2543.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 2543.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

REPORTS AND RECORDS § 2543.50 Purpose of reports and records.

Sections § 2543.51 through § 2543.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 2543.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section § 2543.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph § 2543.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case

of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 2543.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal

awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in Section § 2543.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 2543.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for

the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND EVALUATION § 2543.60 Purpose of termination and enforcement.

Sections § 2543.61 and § 2543.62 set forth uniform suspension, termination and enforcement procedures.

§ 2543.61 Termination.

(a) Awards may be terminated in whole or in part only if:

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award,

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated, or

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph § 2543.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 2543.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in Section § 2543.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable, and

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see Section § 2543.13).

2543.70 Subpart D -- After-the-Award Requirements § 2543.70 Purpose.

Sections § 2543.71 through § 2543.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 2543.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Sections § 2543.31 through § 2543.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 2543.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section § 2543.26.

(4) Property management requirements in Sections § 2543.31 through § 2543.37.

(5) Records retention as required in Section § 2543.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph § 2543.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 2543.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the recipient,

(3) Taking other action permitted by statute, or

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

2543.80 Subpart E -- Statutory Compliance § 2543.80 Contract provisions.

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

§ 2543.81 Equal employment opportunity.

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

§ 2543.82 Copeland "Anti-Kickback" Act.

All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.83 Davis-Bacon Act.

When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

§ 2543.84 Contract Work Hours and Safety Standards Act.

Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to

construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 2543.85 Rights to inventions made under a contract or agreement.

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

§ 2543.86 Clean Air Act and the Federal Water Pollution Control Act.

Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

§ 2543.87 Byrd anti-lobbying amendment.

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

§ 2543.88 Debarment and suspension.

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

2544 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?
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 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 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.

2545 PART 2545—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A—Purpose and Coverage

Sec.

§ 2545.100 What does this part do?
§ 2545.105 Does this part apply to me?
§ 2545.110 Are any of my Federal assistance awards exempt from this part?
§ 2545.115 Does this part affect the Federal contracts that I receive?

Subpart B—Requirements for Recipients Other Than Individuals

§ 2545.200 What must I do to comply with this part?
§ 2545.205 What must I include in my drug-free workplace statement?
§ 2545.210 To whom must I distribute my drug-free workplace statement?
§ 2545.215 What must I include in my drug-free awareness program?
§ 2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
§ 2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
§ 2545.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

§ 2545.300 What must I do to comply with this part if I am an individual recipient?
§ 2545.301 [Reserved]

Subpart D—Responsibilities of Corporation Awarding Officials

§ 2545.400 What are my responsibilities as a(n) Corporation awarding official?

Subpart E—Violations of this Part and Consequences

§ 2545.500 How are violations of this part determined for recipients other than individuals?
§ 2545.505 How are violations of this part determined for recipients who are individuals?
§ 2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?
§ 2545.515 Are there any exceptions to those actions?

Subpart F—Definitions

§ 2545.605 Award.
§ 2545.610 Controlled substance.
§ 2545.615 Conviction.
§ 2545.620 Cooperative agreement.
§ 2545.625 Criminal drug statute.
§ 2545.630 Debarment.
§ 2545.635 Drug-free workplace.
§ 2545.640 Employee.
§ 2545.645 Federal agency or agency.
§ 2545.650 Grant.
§ 2545.655 Individual.
§ 2545.660 Recipient.
§ 2545.665 State.
§ 2545.670 Suspension.

Authority: 41 U.S.C. 701, et seq.; 42 U.S.C. 12644 and 12651(c).

68 FR 66643, Nov. 26, 2003, unless otherwise note.

2545.100 Subpart A—Purpose and Coverage § 2545.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 2545.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Corporation; or

(2) A(n) Corporation awarding official. (See definitions of award and recipient in §§ 2545.605 and 2545.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual…….	A, B and E.
(2) A recipient who is an individual.....	A, C and E.
(3) A(n) Corporation awarding official……...	A, D and E.

§ 2545.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Corporation Chief Executive Officer or designee determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 2545.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 2545. 510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

2545.200 Subpart B—Requirements for Recipients Other Than Individuals
§ 2545.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 2545.205 through 2545.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 2545.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 2545.230).

§ 2545.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 2545.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 2545.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 2545.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 2545.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 2545.205 and an ongoing awareness program as described in § 2545.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more.	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Corporation awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 2545.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 2545.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must_

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either_

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 2545.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Corporation award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces_

(1) To the Corporation official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Corporation officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.,* all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Corporation awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Corporation awarding official.

2545.300 Subpart C—Requirements for Recipients Who Are Individuals § 2545.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) Corporation award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Corporation awarding official or other designee for each award that you currently have, unless § 2545.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

2545.400 § 2545.301 [Reserved]

Subpart D—Responsibilities of Corporation Awarding Officials § 2545.400 What are my responsibilities as a(n) Corporation awarding official?

As a(n) Corporation awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

2545.500 Subpart E—Violations of this Part and Consequences § 2545.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Corporation Chief Executive Officer or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 2545.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Corporation Chief Executive Officer or designee determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 2545.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 2545.500 or § 2545.505, the Corporation may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 45 CFR Part 2542, for a period not to exceed five years.

§ 2545.515 Are there any exceptions to those actions?

The Corporation Chief Executive Officer may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Corporation Chief Executive Officer determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

2545.605 Subpart F—Definitions § 2545.605 Award.

Award means an award of financial assistance by the Corporation or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule 45 CFR part 2541 that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.,* any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 2545.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 2545.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 2545.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 2545.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 2545.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 2545.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for

procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 2545.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 2545.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.,* volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 2545.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 2545.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 2545.655 Individual.

Individual means a natural person.

§ 2545.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 2545.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 2545.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

2550 PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

Sec.

§ 2550.10 What is the purpose of this part?
§ 2550.20 Definitions.
§ 2550.30 How does a State decide whether to establish a State commission or an alternative administrative entity?
§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?
§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?
§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?
§ 2550.70 [Reserved]
§ 2250.80 What are the duties of the State entities?
§ 2550.85 How will the State Plan be assessed?
§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

§ 2550.100 Do State entities or their members incur any risk of liability?
§ 2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

Authority: 42 U.S.C. 12638.

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 Agreements 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 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)).

(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 estalbish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) 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 resubmission.

[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 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 53752, Sept. 17, 2008]

§ 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 applications 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 (l) (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 nonprofit 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 and as amended at 73 FR 53752, Sept. 17, 2008]

§ 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 53752, 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 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), 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

2012 AMERICORPS GRANT PROVISIONS

Effective June 1, 2012

These Corporation for National & Community Service (CNCS) AmeriCorps Grant Provisions are binding on the grantee. By accepting funds under this grant, the grantee agrees to comply with, and include in all subgrants, the AmeriCorps Provisions, all applicable federal statutes, regulations and guidelines, and any amendments thereto. The grantee agrees to operate the funded program in accordance with the approved grant application and budget, supporting documents, and other representations made in support of the approved grant application. For the purposes of these Provisions, "AmeriCorps" refers to AmeriCorps State and National grantees only. The term grantee is used to connote either grantee or subgrantee, as appropriate, throughout these Provisions.

TABLE OF CONTENTS

I. Changes from the 2012 AmeriCorps Grant Provisions 2
II. Legislative and Regulatory Authority 2
III. Other Applicable Statutory and Administrative Provisions 2
- A. States, Indian Tribes, U.S. Territories, and Local Governments 2
- B. Nonprofit Organizations 3
- C. Educational Institutions 3
- D. Other Applicable Statutes and Regulations 3
- E. Exemptions for Fixed Amount Grants 3
- F. Order of Precedence 4

IV. AmeriCorps Special Provisions 4
- A. Definitions 4
- B. Affiliation with the AmeriCorps National Service Network 5
- C. Member Recruitment, Selection, and Exit 6
- D. Supervision and Support 7
- E. Changes in Member Terms of Service or Program Slots 9
- F. Release from Participation 11
- G. Living Allowances, Other In-Service Benefits, and Taxes 11
- H. Member Records and Confidentiality 14
- I. Budget and Programmatic Changes 15
- J. Reporting Requirements 16
- K. Grant Period and Incremental Funding 17

V. General Provisions 18
- A. Responsibilities under Grant Administration 18
- B. Financial Management Standards 18
- C. The Office of Inspector General 19
- D. Program Income 20
- E. Safety 20
- F. Non-Discrimination Public Notice and Records Compliance 20
- G. Grants Products 21
- H. Suspension or Termination of Grant 22
- I. Fixed Amount Awards 22
- J. Trafficking in Persons 22

K. Central Contractor Registration and Universal Identifier Requirements……..…..24
L. Transparency Act Award Term (for grants & cooperative agreements of $25,000 or more).....25
VI. Attachment
Grant Program Civil Rights and Non-Harassment Policy 29

I. CHANGES FROM THE 2011 AMERICORPS GRANT PROVISIONS

1. Section II – Updated references for the implementing regulations.
2. Section III. C. - Updated citation for access to the OMB Circulars and implementing regulations.
3. Section IV. G. 4. – Provided additional information related to the minimum benefits for healthcare coverage.
4. Section IV.J.1. – Changed annual progress reports to semi-annual progress reports, and updated due dates.
5. Section IV.J.5. – Added the final project report requirement.
6. Section V. D. 2. – Added additional citations for excess program income.
7. Attachment – Replaced regulations relevant to the 2012 Grant Program Civil Rights and Non-Harassment Policy.

II. LEGISLATIVE AND REGULATORY AUTHORITY

This grant is authorized by and subject to the National and Community Service Act of 1990, as amended by the Serve America Act, (42 U.S.C. 12501 *et seq*.) and the implementing regulations at 45 CFR Chapter XXV. Grantees must comply with the requirements of the Act and its implementing regulations.

III. OTHER APPLICABLE STATUTORY AND ADMINISTRATIVE PROVISIONS

The following applicable federal cost principles, administrative requirements and audit requirements are incorporated by reference:

A. STATES, INDIAN TRIBES, U.S. TERRITORIES, AND LOCAL GOVERNMENTS

The following circulars and their implementing regulations apply to states, Indian tribes, U.S. territories, and local governments:

1. OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments – 45 CFR Part 2541.
2. OMB Circular A-87, Cost Principles for State and Local Governments – 2 CFR Part 225.
3. OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

Fixed Amount grants are exempt from OMB Circular A-87, Cost Principles for State and Local Governments – 2 CFR Part 225.

B. NONPROFIT ORGANIZATIONS

The following circulars and their implementing regulations apply to nonprofit organizations:

1. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations – 45 CFR Part 2543 or 2 CFR Part 215.
2. OMB Circular A-122, Cost Principles for Nonprofit Organizations – 2 CFR Part 230.
3. OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

Fixed Amount grants are exempt from OMB Circular A-122, Cost Principles for Nonprofit Organizations - 2 CFR Part 230.

C. EDUCATIONAL INSTITUTIONS

The following circulars and their implementing regulations apply to educational institutions:

1. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations – 45 CFR Part 2543 or 2 CFR Part 215.
2. OMB Circular A-21, Cost Principles for Educational Institutions – 2 CFR Part 220.
3. OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

Fixed Amount grants are exempt from OMB Circular A-21, Cost Principles for Educational Institutions – 2 CFR Part 220.

These documents can be found here:
www.whitehouse.gov/omb/financial_offm_circulars/.

D. OTHER APPLICABLE STATUTES AND REGULATIONS

The grantee must comply with all other applicable statutes, executive orders, regulations, and policies governing the grant, including, but not limited to, those cited in these Grant Provisions, the Grant Assurances and Certifications, and those cited in 45 CFR Parts 2541 and 2543.

E. EXEMPTIONS FOR FIXED AMOUNT GRANTS

Fixed Amount grants are exempt from the Cost Principles. (See above for the exemptions.) Fixed Amount grants must comply with OMB Circular A-133 and the Uniform Administrative Requirements. Fixed Amount grants include Education Award programs, Professional Corps, and Full-Cost Fixed Amount grants.

F. ORDER OF PRECEDENCE

Any inconsistency in the Grant Award shall be resolved by giving precedence in the following order (a) Applicable Federal Statutes, (b) applicable Federal regulations, (c) CNCS Grant Special Provisions, (d) CNCS Grant General Provisions, (e) the Notice of Funding Opportunity, and (f) the approved Grant Application including all assurances, certifications, attachments, and pre-award negotiations.

IV. AMERICORPS SPECIAL PROVISIONS

A. DEFINITIONS

For purposes of this grant the following definitions apply:

1. **Grantee**, for the purposes of this agreement, means the direct recipient of this grant. The grantee is legally accountable to the CNCS for the use of grant funds and is bound by the provisions of the grant. The grantee is responsible for ensuring that subgrantees or other organizations carrying out activities under this award comply with all applicable Federal requirements, including these provisions, regulations and OMB circulars incorporated by reference.

2. **Subgrantee** refers to an organization receiving AmeriCorps grant funds or member positions from a grantee of the CNCS. See 2 CFR § 215.5 and 45 CFR § 2453.5, and 45 CFR § 2541.370.

3. **Operating site** means the organization that manages the AmeriCorps program and places members into service locations. State subgrantees (programs) are operating sites. National grantees must identify at least one operating site to which they can assign service locations in the state where they are placing members.

4. **Service Location** means the organization where or with which a member actually provides his or her service in the community. Typical service locations are schools, food banks, health clinics, community parks, etc. The service location may be the same as the operating site, but only if the member actually serves at or with the operating site organization. A member may serve at multiple service locations, all of which must be listed in the portal, although the program must select only one for the member's primary assignment.

5. **Member or participant** means an individual:

    a. Who has been selected by a grantee or subgrantee to serve in an approved national service position;
    b. Who is a U.S. citizen, U.S. national, or lawful permanent resident alien of the United States;
    c. Who is at least 17 years of age at the commencement of service unless the member is out of school and enrolled in a full-time, year-round youth corps or full-time summer

program as defined in the Act (42 U.S.C. § 12572 (a)(3)(B)(x)), in which case he or she must be between the ages of 16 and 25, inclusive, and

d. Who has a high school diploma or an equivalency certificate (or agrees to obtain a high school diploma or its equivalent before using an education award) and who has not dropped out of elementary or secondary school in order to begin a term of service as an AmeriCorps member (unless enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965, 20 U.S.C. § 1091), or who has been determined through an independent assessment conducted by the grantee to be incapable of obtaining a high school diploma or its equivalent.

B. AFFILIATION WITH THE AMERICORPS NATIONAL SERVICE NETWORK

1. **Identification as an AmeriCorps Program or Member.** The grantee must identify the program as an AmeriCorps program and eligible members as AmeriCorps members. All partnership agreements/MOUs related to the AmeriCorps program must explicitly state that the program is an AmeriCorps program and AmeriCorps members are the resource being provided.

2. **The AmeriCorps Name and Logo.** AmeriCorps is a registered service mark of the Corporation for National and Community Service. CNCS provides a camera-ready logo. All grantee and subgrantee websites must clearly state that they are an AmeriCorps grantee and must prominently display the AmeriCorps logo. Grantees and subgrantees, except for Education Award Programs (EAPs), must use the AmeriCorps name and logo on service gear and public materials such as stationery, application forms, recruitment brochures, on-line position postings or other recruitment materials, orientation materials, member curriculum materials, signs, banners, press releases and publications related to their AmeriCorps program in accordance with CNCS requirements. EAPs are strongly encouraged to use the AmeriCorps name and logo on such materials.

   To publicize the relationship between the program and AmeriCorps, the grantee should use one of the following phrases when describing their program: "The AmeriCorps National Service Network," "an AmeriCorps program," or "a proud member of the AmeriCorps national service network." Grantees are strongly encouraged to provide information or training to their AmeriCorps members about how their program is part of the national AmeriCorps program and about the other national service programs of CNCS. Grantees are strongly encouraged to place signs that include the AmeriCorps name and logo at their service sites and may use the slogan "AmeriCorps Serving Here." AmeriCorps members should state they are AmeriCorps members during public speaking opportunities.

   The grantee may not alter the AmeriCorps logo, and must obtain written permission from CNCS before using the AmeriCorps name or logo on materials that will be sold, or permitting donors to use the AmeriCorps name or logo in promotional materials. The grantee may not use or display the AmeriCorps name or logo in connection with any activity prohibited in these grant provisions.

C. MEMBER RECRUITMENT, SELECTION, AND EXIT

Member recruitment and selection requirements are in CNCS's regulations at 45 CFR § 2522.210. In addition, the grantee must ensure that the following procedures are followed:

1. **Notice to CNCS's National Service Trust**. The grantee must notify CNCS's National Service Trust within 30 days of a member's selection for, completion of, suspension from, or release from, a term of service. Suspension of service is defined as an extended period during which the member is not serving, nor accumulating service hours or receiving AmeriCorps benefits.

   The grantee also must notify the Trust, via the My AmeriCorps Portal, when a change in a member's term of service is approved and changed (i.e. from full-time to less than full-time or vice versa). Failure to report such changes within 30 days may result in sanctions to the grantee, up to and including, suspension or termination of the grant. Grantees or subgrantees meet notification requirements by using the appropriate electronic system to inform CNCS of changes within the required time frames. Any questions regarding the Trust should be directed to the Trust Office (800) 942-2677.

   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 other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

2. **Parental Consent**. Parental or legal guardian consent must be obtained for members under 18 years of age before members begin a term of service. Grantees may also include an informed consent form of their own design as part of the member service agreement materials.

3. **Reasonable Accommodation**. Programs and activities must be accessible to persons with disabilities, and the grantee must provide reasonable accommodation to the known mental or physical disabilities of otherwise qualified members, service recipients, applicants, and staff. All selections and project assignments must be made without regard to the need to provide reasonable accommodation. See the FAQ titled "Reasonable Accommodation" for more information.

4. **Assigning Members to Service Locations.** So that CNCS can track where every member is serving, the grantee is required to ensure that all operating sites and all service locations are entered in the My AmeriCorps portal for all members within 30 days of members' selection for a term of service. As AmeriCorps State and National programs enroll members for service they are required to include the name of the organization, and the full address or zip-plus-four of the service locations where each member will be serving. If a member is serving at multiple service locations, the program must select the one where the member serves a majority of his or her hours for the member's assignment, however, all service locations must be listed in the portal.

5. **Timekeeping.** The grantee is required to ensure that time and attendance recordkeeping is conducted by the AmeriCorps member's supervisor. This time and attendance record is used to document member eligibility for in-service and post-service benefits. Time and attendance records must be signed and dated both by the member and his/her supervisor.

   If a Professional Corps program wants to follow the timekeeping practices of its profession and certify that members have completed the minimum required hours, excluding sick and vacation days, it must get advance written approval from CNCS.

6. **Completion of Terms of Service.** The grantee must ensure that each member has sufficient opportunity to complete the required number of hours of service to qualify for the education award. Members must be exited within 30 days of the end of their term of service. Should a program not be renewed, a member who was scheduled to continue in a term of service may either be placed in another program, where feasible, or if the member has completed at least 15% of the service hour requirement, a member may receive a pro-rated education award.

7. **Member Exit**. In order for a member to receive an education award from the National Service Trust, the grantee must certify to the National Service Trust that the member satisfactorily and successfully completed the term of service, and is eligible to receive the education benefit. The grantee (and any individual or entity acting on behalf of the grantee) is responsible for the accuracy of the information certified on the end-of-term certification.

D. SUPERVISION AND SUPPORT

1. **Planning for the Term of Service.** The grantee must develop member positions that provide for meaningful service activities and performance criteria that are appropriate to the skill level of members. The grantee is responsible for ensuring that the positions do not include or put the AmeriCorps member in a situation in which the member is at risk for engaging in any prohibited activity (see 45 CFR § 2520.65), activity that would violate the non-duplication and non-displacement requirements (see 45 CFR § 2540.100), or prohibited fundraising activity (see 45 CFR §§ 2520.40-45). The grantee must accurately and completely describe the activities to be performed by each member in a position description. Position descriptions must be provided to CNCS upon request. The grantee must ensure that each member has sufficient opportunity to complete the required number of hours to qualify for an education award. In planning for the member's term of service, the grantee must account for holidays and other time off, and must provide each member with sufficient opportunity to make up missed hours.

2. **Member Service Agreements.** The grantee must require that each member sign a service agreement that, at minimum, includes the following:

   a. Member position description;

b. The minimum number of service hours (as required by statute) and other requirements (as developed by the grantee) necessary to successfully complete the term of service and to be eligible for the education award;
c. The amount of the education award being offered for successful completion of the terms of service in which the individual is enrolling;
d. Standards of conduct, as developed by the grantee or subgrantee;
e. The list of prohibited activities, including those specified in the regulations at 45 § CFR 2520.65 (see paragraph 3, below);
f. Requirements under the Drug-Free Workplace Act (41 U.S.C. § 701 *et seq*.);
g. Civil rights requirements, complaint procedures, and rights of beneficiaries (see Section V.F.);
h. Suspension and termination rules;
i. The specific circumstances under which a member may be released for cause;
j. Grievance procedures; and
k. Other requirements established by the grantee.

The grantee should ensure that the service agreement is signed before commencement of service so that members are fully aware of their rights and responsibilities.

3. **Prohibited Activities.** While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

a. Attempting to influence legislation;
b. Organizing or engaging in protests, petitions, boycotts, or strikes;
c. Assisting, promoting, or deterring union organizing;
d. Impairing existing contracts for services or collective bargaining agreements;
e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
f. 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;
g. 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;
h. 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 related to engaging in political activities or substantial amount of lobbying except that nothing in these

provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and

v. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;

i. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
j. Providing abortion services or referrals for receipt of such services; and
k. Such other activities as CNCS may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. 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- CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

4. **Supervision.** The grantee must provide members with adequate supervision by qualified supervisors consistent with the approved application. The grantee must conduct an orientation for members, including training on what activities are prohibited during AmeriCorps service hours, and comply with any pre-service orientation or training required by CNCS. The grantee must ensure that it does not exceed the limitation on member service hours spent in education and training set forth in 45 CFR § 2520.50.

5. **Performance Reviews.** The grantee must conduct and keep a record of at least a midterm and end-of-term written evaluation of each member's performance for Full and Half-Time members and an end-of-term written evaluation for less than Half-time members. The end-of-term evaluation should address, at a minimum, the following factors:

   a. Whether the member has completed the required number of hours;
   b. Whether the member has satisfactorily completed assignments; and
   c. Whether the member has met other performance criteria that were clearly communicated at the beginning of the term of service.

6. **Member Death or Injury.** The grantee must immediately report any member deaths or serious injuries to the designated CNCS Program Officer.

E. CHANGES IN MEMBER TERMS OF SERVICE OR PROGRAM SLOTS

1. **Changes that Require CNCS Approval**. Circumstances may arise within a program that necessitate changing the type of unfilled AmeriCorps member positions awarded to a grantee or subgrantee, or changing the term of service of a currently enrolled member. Note that once a member is exited with a partial education award, the remaining portion of that education award is not available for use. The following changes require written approval from CNCS's Office of Grants Management as well as written approval and concurrence from the State Commission or National Direct grantee:

a. A change in the number of member service year positions in the grant; and/or
b. A change in the funding level of the grant.

2. **Changing Slot Types (unfilled positions).** Except for Full-cost and Professional Corps Fixed Amount grants, grantees or subgrantees may change the type of slots awarded to their program if:

   a. The change does not increase the total MSYs authorized in the Notice of Grant Award (e.g. one half-time position cannot be changed to one full-time position); and
   b. The change does not increase the amount of the education award.

   All changes are subject to availability of funds in the Trust, must be Trust neutral, and must comply with all assumptions on which Trust prudence and continued solvency are predicted. Changes in slot type may be made by the grantee directly in the My AmeriCorps Portal.

3. **Changing a Term of Service (currently enrolled positions).** Changes in terms of service may not result in an increased number of MSYs for the program. With the exception of Education Award only grants, grantees with Fixed Amount grants may not convert members to less-than-full-time slots.

   a. **Full-time**. State Commissions and Parent Organizations may authorize or approve occasional changes of currently enrolled full-time members to less than full-time members. Impact on program quality should be factored into approval of requests. CNCS will not cover health care or childcare costs for less than full-time members. It is not allowable to transfer currently enrolled full-time members to a less than full-time status simply to provide a less than full-time education award.
   b. **Less than Full-time**. CNCS discourages changing less than full-time members to full-time because it is very difficult to manage, unless done very early in the member's term of service. State Commissions and Parent Organizations may authorize or approve such changes so long as their current budget can accommodate such changes. Programs must keep in mind that a member's minimum 1700 hours must be completed within 12 months of the member's original start date.
   c. **Refilling Slots**. Eligible AmeriCorps State and National programs that have fully enrolled their awarded member slots are allowed to replace any member who terminates service before completing 30 percent of his/her term provided that the member who is terminated is not eligible for and does not receive a pro-rated education award. Programs may not refill the same slot more than once.

      As a fail-safe mechanism to ensure that resources are available in the National Service Trust to finance all earned education awards, CNCS will suspend refilling if either:
      i. Total AmeriCorps enrollment reaches 97 percent of awarded slots; or
      ii. The number of refills reaches five percent of awarded slots.

Grantees whose awards have special grant conditions under 45 CFR § 2543.14 or § 2541.120 are not eligible to refill positions.

4. **Formula and State Competitive Grant Slot Transfers.** State commissions are allowed to transfer slots among their state formula and competitive subgrantees in order to maximize enrollment and cost effectiveness without prior approval. State commissions may not transfer slots between competitive and formula subgrantees, or vice-versa. State commissions may not transfer funds among their competitive subgrantees. Slots eligible for refill are not allowed to be transferred.

5. **Notice to Childcare and Healthcare Providers**. The grantee must immediately notify CNCS's designated agents, in writing, when a member's status changes in a manner that affects eligibility for childcare or healthcare. See Section IV.G. 6.

F. RELEASE FROM PARTICIPATION

Grantees may release members from participation for two reasons: (a) for compelling personal circumstances; and (b) for cause. See 45 CFR § 2522.230 for requirements. Whether the reason for the release amounts to circumstances beyond the member's control is determined by the grantee, consistent with the criteria listed in 45 CFR § 2522.230(a). Failure to follow the requirements set forth in regulation (e.g., releasing an individual for compelling personal circumstances when the individual is leaving to go to school) is considered non-compliance with grant requirements and may result in disallowed costs and other remedies for non-compliance. In addition to the regulations, the following applies:

***No Automatic Disqualification if Released for Cause**:* A release for cause covers all circumstances in which a member does not successfully complete his/her term of service for reasons other than compelling personal circumstances. Therefore, it is possible for a member to receive a satisfactory performance review and be released for cause. For example, a member who is released for cause from a first term–e.g. the individual has decided to take a job offer–but who, otherwise, performed well, would not be disqualified from enrolling for a subsequent term as long as the individual received a satisfactory performance evaluation for the first period of service.

G. LIVING ALLOWANCES, OTHER IN-SERVICE BENEFITS, AND TAXES

1. **Living Allowance Distribution.** A living allowance is not a wage. Grantees must not pay a living allowance on an hourly basis. Grantees should pay the living allowance in regular increments, such as weekly or bi-weekly, paying an increased increment only on the basis of increased living expenses such as food, housing, or transportation. Payments should not fluctuate based on the number of hours served in a particular time period, and must cease when the member's service ceases.

   If a member serves all required hours and is permitted to conclude his or her term of service before the originally agreed upon end of term, the grantee may not provide a lump sum payment to the member. Similarly, if a member is selected after the program's start

date, the grantee must provide regular living allowance payments from the member's start date and may not increase the member's living allowance incremental payment or provide a lump sum to make up any missed payments.

AmeriCorps EAPs may provide a living allowance or other in-service benefits to their members, but are not required to do so. Full-cost and other Fixed Amount grantees must provide a living allowance to their members.

2. **Waiving the Living Allowance.** If a living allowance is paid, a member may waive all or part of the payment of a living allowance if he or she believes his or her public assistance may be lost or decreased because of the living allowance. Even if a member waives his or her right to receive the living allowance, it is possible—depending on the specific public assistance program rules—that the amount of the living allowance that the member is eligible to receive will be deemed available. A member who has waived the living allowance may revoke the waiver at any time and may begin receiving the living allowance going forward from the date the individual revoked the waiver. A member may not receive any portion of the living allowance for the period of time the living allowance was waived.

3. **Taxes and Insurance.** Requirements related to member living allowances and benefits are in 45 CFR §§ 2522.240 and 2522.250. In addition, grantees must ensure that the following procedures are followed:

   a. **Liability Insurance Coverage.** The grantee is responsible for ensuring adequate general liability coverage for the organization, employees and members, including coverage of members engaged in on- and off-site project activities.
   b. **FICA (Social Security and Medicare taxes).** Unless the grantee obtains a ruling from the Social Security Administration or the Internal Revenue Service that specifically exempts its AmeriCorps members from FICA requirements, the grantee must pay FICA for any member receiving a living allowance. The grantee also must withhold 7.65% from the member's living allowance.
   c. **Income Taxes.** The grantee must withhold Federal personal income taxes from member living allowances, requiring each member to complete a W-4 form at the beginning of the term of service and providing a W-2 form at the close of the tax year. The grantee must comply with any applicable state or local tax requirements.
   d. **Worker's Compensation**. Some states require worker's compensation for AmeriCorps members. Grantees must check with State Departments of Labor or state commissions to determine worker's compensation requirements. If worker's compensation is not required, grantees must obtain Occupational, Accidental, and Death and Dismemberment coverage for members to cover in-service injury or incidents.

4. **Healthcare Coverage.** Except for EAPs, Professional Corps, or members covered under a collective bargaining agreement, the grantee must provide, or make available, healthcare insurance to those members serving a 1700-hour full-time term who are not otherwise covered by a healthcare policy at the time the member begins his/her term of

service. The grantee must also provide, or make available, healthcare insurance to members serving a 1700-hour full-time term who lose coverage during their term of service as a result of service or through no deliberate act of their own. CNCS will not cover healthcare costs for dependent coverage.

Less-than-full-time members who are serving in a full-time capacity for a sustained period of time (e.g. a full-time summer project) are eligible for healthcare benefits. Programs may provide health insurance to less-than-full-time members serving in a full-time capacity, but they are not required to do so. For purposes of this provision, a member is serving in a full-time capacity when his/her regular term of service will involve performing service on a normal full-time schedule for a period of six weeks or more. A member may be serving in a full-time capacity without regard to whether his/her agreed term of service will result in a full-time Segal AmeriCorps Education Award.

Minimum Benefits. When required to provide healthcare insurance coverage, the grantee may obtain healthcare from any provider. Coverage provided by the grantee must be provided for a period of no more than 364 days, and cannot be renewed or extended beyond that period. Coverage must include the following minimum benefits:

a. Physician services for illness or injury
b. Hospital room and board
c. Emergency room
d. X-ray and laboratory
e. Prescription drugs
f. Limited mental/nervous disorders
g. Limited substance abuse coverage
h. An annual deductible of no more than $250 charges per member
i. No more than $1,000 total annual out-of-pocket per member
j. A 20% co-pay or a comparable fixed fee with the exception of a 50% co-pay for mental and substance abuse care
k. A maximum benefit of at least $50,000 per occurrence or cause

5. **Administration of Childcare Payments.** In general, CNCS will provide for childcare payments, which will be administered through an outside contractor. Requirements and eligibility criteria are in the AmeriCorps regulations, 45 CFR § 2522.250. Grantees that choose to provide childcare as a match source (as approved in their budget) may contact the childcare contractor for technical assistance. Grantees can contact the AmeriCorps hotline at 1-800-942-2677 with questions regarding childcare. The criteria for member eligibility are contained in 45 CFR § 2522.250. Members are considered to be full-time participants for purposes of eligibility for childcare payments on the same basis as eligibility for healthcare coverage. Members who are excluded from healthcare coverage solely on the basis of serving in a Professional Corps, or because they are covered under a collective bargaining agreement are not excluded from receiving childcare benefits on that basis. Members serving in EAPs are not eligible for the childcare benefit. CNCS will not cover childcare costs for family members or for members who served on a less

than full-time basis, or who have ceased serving. Programs may provide child care to less-than-full-time members serving in a full-time capacity, but they are not required to do so. Also see the FAQs (http://www.americorps.gov/for_organizations/manage/index.asp) for more detailed information on administering childcare and healthcare benefits.

6. **Notice to Childcare and Healthcare Providers**. The grantee must immediately notify CNCS's designated agents in writing, when a member's status changes in a manner that affects the member's eligibility for childcare or healthcare. Examples of changes in status include: changes to a member's scheduled service so that he/she is no longer serving on a full-time basis, terminating or releasing a member from service, and suspending a member for cause for a lengthy or indefinite time period. Program directors should contact the childcare provider on childcare related changes, and their healthcare benefit provider about healthcare benefit related changes.

H. MEMBER RECORDS AND CONFIDENTIALITY

1. **Recordkeeping.** The grantee must maintain records, including the position description, sufficient to establish that each member was eligible to participate and that the member successfully completed all program requirements. A program may store member files electronically if the program can ensure that the validity and integrity of the record is not compromised. CNCS will recognize electronically stored files where:

   The electronic storage procedures and system provide for the safe-keeping and security of the records, including:

   a. Sufficient prevention of unauthorized alterations or erasures of records;
   b. Effective security measures to ensure that only authorized persons have access to records;
   c. Adequate measures designed to prevent physical damage to records; and
   d. A system providing for back-up and recovery of records; and

   The electronic storage procedures and system provide for the easy retrieval of records in a timely fashion, including:

   a. Storage of the records in a physically accessible location;
   b. Clear and accurate labeling of all records; and
   c. Storage of the records in a usable, readable format.

   Where there is a requirement for a signature on a record, electronically stored records must include an image of the original signature; records without signatures, when required, are considered incomplete.

2. **Verification of Eligibility.** The grantee must obtain and maintain documentation as required by 45 CFR § 2522.200(c). CNCS does not require programs to make and retain copies of the actual documents used to confirm age or citizenship eligibility

requirements, such as a driver's license, or birth certificate, as long as the grantee has a consistent practice of identifying the documents that were reviewed and maintaining a record of the review.

Enrolling in the My AmeriCorps portal requires members to certify their high school status. Such certification fulfills the grantee's verification requirement to obtain and maintain documentation from the member relating to the member's high school education. If the member is incapable of obtaining a high school diploma or its equivalent, as determined by an independent evaluation, the grantee must retain a copy of the supporting evaluation.

3. **Confidential Member Information.** The grantee must maintain the confidentiality of information regarding individual members. The grantee must obtain the prior written consent of all members before using their names, photographs and other identifying information for publicity, promotional or other purposes. Grantees may release aggregate and other non-identifying information, and are required to release member information to CNCS and its designated contractors. The grantee must permit a member who submits a written request for access to review records that pertain to the member and were created pursuant to this grant.

I. BUDGET AND PROGRAMMATIC CHANGES

1. **Programmatic Changes.** The grantee must first obtain the prior written approval of the AmeriCorps Program Office before making any of the following changes:

   a. Changes in the scope, objectives or goals of the program, whether or not they involve budgetary changes;
   b. Substantial changes in the level of participant supervision;
   c. Entering into additional subgrants or contracts for AmeriCorps activities funded by the grant, but not identified or included in the approved application and grant budget.

2. **Program Changes for Formula Programs**. State Commissions are responsible for approving the above changes for state formula programs.

3. **Budgetary Changes.** The grantee must obtain the prior written approval of CNCS's Office of Grants Management before deviating from the approved budget in any of the following ways:

   a. Specific Costs Requiring Prior Approval before Incurrence under OMB Circulars A-21 (2 CFR Part 220), A-87 (2 CFR Part 225), or A-122 (2 CFR Part 230). For certain cost items, the cost circulars require approval of the awarding agency for the cost to be allowable. Examples of these costs are overtime pay, rearrangement and alteration costs, and pre-award costs.
   b. Purchases of Equipment over $5,000 using grant funds, unless specified in the approved application and budget.

c. Unless the CNCS share of the award is $100,000 or less, changes to cumulative and/or aggregate budget line items that amount to 10 per cent or more of the total budget must be approved in writing in advance by CNCS. The total budget includes both the CNCS and grantee shares. Grantees may transfer funds among approved direct cost categories when the cumulative amount of such transfers does not exceed 10 percent of the total budget.

4. **Approvals of Programmatic and Budget Changes.** CNCS's Grants Officers are the only officials who have the authority to alter or change the provisions or requirements of the grant. The Grants Officers will execute written amendments, and grantees should not assume approvals have been granted unless documentation from the Grants Office has been received. Programmatic changes also require final approval of CNCS's Office of Grants Management after written recommendation for approval is received from the Program Office.

5. **Exceptions for Fixed Amount Grants**. Grantees with Fixed Amount grants are not subject to the requirements in Section 3, Budgetary Changes.

J. REPORTING REQUIREMENTS

This section applies only to the grantee. The grantee is responsible for timely submission of periodic financial and progress reports during the project period and a final financial report.

1. **Grantee Progress Reports.** The grantee shall complete and submit progress reports in eGrants to report on progress toward achievement of its approved performance targets.

Due Date	**Reporting Period Covered**
April 30	Start of grant through March 31
October 31	April 1 – September 30

A grantee must set submission deadlines for its respective subgrantees that ensure the timely submission of grantee reports.

2. **Financial Reports.** The grantee shall complete and submit financial reports in eGrants (Financial Status Reports on menu tree) to report the status of all funds. The grantee must submit timely cumulative financial reports in accordance with CNCS guidelines according to the following schedule:

Due Date	**Reporting Period Covered**
April 30	Start of grant through March 31
October 31	April 1 – September 30

A grantee must set submission deadlines for its respective subgrantees that ensure the timely submission of grantee reports.

Cost reimbursement National Professional Corps grantees submit one financial report per year.

All grantees including Fixed Amount grants must submit the Federal Financial Report (FFR) - Cash Transactions Report on a quarterly basis to the Department of Health and Human Services Payment Management System per the Electronic Funds Transfer Agreement.

3. **Reporting Other Federal Funds.** The grantee shall report the amount and sources of federal funds, other than those provided by CNCS, used to carry out its programs. This includes other federal funds expended by subgrantees and operating sites. This information shall be reported annually on the financial report due October 31st. Fixed Amount grantees are not required to report this information.

4. **Requests for Extensions.** Each grantee must submit required reports by the given dates. Extensions of reporting deadlines will be granted only when 1) the report cannot be furnished in a timely manner for reasons, in the determination of CNCS, legitimately beyond the control of the grantee, and 2) CNCS receives a request explaining the need for an extension before the due date of the report.

   Extensions of deadlines for financial reports may only be granted by the Office of Grants Management, and extensions of deadlines for progress reports may only be granted by the AmeriCorps Program Office.

5. **Final Project and Financial Reports.** A grantee must submit, in lieu of the last semi-annual project and financial reports, a final project and financial report. These final reports are due within 90 days after the end of the grant.

6. **Financial Reports for Fixed Amount Grants.** Fixed Amount grantees are not required to submit the financial reports to CNCS, including the final financial report.

K. GRANT PERIOD AND INCREMENTAL FUNDING

For the purpose of the grant, a project period is the complete length of time the grantee is proposed to be funded to complete approved activities under the grant. A project period may contain one or more budget periods. A budget period is a specific interval of time for which Federal funds are being provided to fund a grantee's approved activities and budget.

Unless otherwise specified, the grant covers a three-year project period. In approving a multi-year project period, CNCS generally makes an initial award for the first year of operation. Additional funding is contingent upon satisfactory performance, a grantee’s demonstrated capacity to manage a grant and comply with grant requirements, and the availability of Congressional appropriations. CNCS reserves the right to adjust the amount of a grant award, or elect not to continue funding, on these bases. The project period and the budget period are noted on the award document.

V. GENERAL PROVISIONS

A. RESPONSIBILITIES UNDER GRANT ADMINISTRATION

1. **Accountability of the Grantee.** The grantee has full fiscal and programmatic responsibility for managing all aspects of the grant and grant-supported activities, subject to the oversight of CNCS. The grantee is accountable to CNCS for its operation of the AmeriCorps program and the use of CNCS grant funds. The grantee must expend grant funds in a judicious and reasonable manner, and it must record accurately the service activities and outcomes achieved under the grant. Although grantees are encouraged to seek the advice and opinion of CNCS on special problems that may arise, such advice does not diminish the grantee's responsibility for making sound judgments and does not shift the responsibility for operating decisions to CNCS.

2. **Subawards.** A grantee may make subgrants in accordance with the requirements set forth in 45 CFR Part 2541 or 2 CFR Part 215 and 45 CFR Part 2543. The grantee must have and implement a plan for oversight and monitoring to ensure that each subgrantee and service site has agreed to comply, and is complying, with grant requirements. This includes oversight and monitoring to ensure that AmeriCorps members are not engaging in prohibited activities in 45 CFR § 2520.65.

3. **Notice to CNCS.** The grantee will notify the appropriate CNCS Program or Grants Officer immediately of any developments or delays that have a significant impact on funded activities, any significant problems relating to the administrative or financial aspects of the grant, or any suspected misconduct or malfeasance related to the grant or grantee. The grantee will inform the CNCS official about the corrective action taken or contemplated by the grantee and any assistance needed to resolve the situation.

B. FINANCIAL MANAGEMENT STANDARDS

1. **General.** The grantee must maintain financial management systems that include standard accounting practices, sufficient internal controls, a clear audit trail, and written cost allocation procedures, as necessary. Financial management systems must be capable of distinguishing expenditures attributable to this grant from expenditures not attributable to this grant. The systems must be able to identify costs by program year and by budget category, and to differentiate between direct and indirect costs, or administrative costs. For further details about the grantee's financial management responsibilities, refer to OMB Circular A-102 and its implementing regulations (45 CFR Part 2541) or A-110 (2 CFR Part 215) and it's implementing regulations (2 CFR Part 205 and 45 CFR Part 2543), as applicable.

2. **Consistency of Treatment.** To be allowable under an award, costs must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization. Furthermore, the costs must be accorded consistent treatment in both federally financed and other activities, as well as between activities, supported by different sources of federal funds.

3. **Audits.** Grantee organizations that expend $500,000 or more in total federal awards in a fiscal year shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act, as amended, 31 U.S.C. 7501, et seq., and OMB Circular A-133. If the grantee expends federal awards under only one federal program, it may elect to have a program specific audit, if it is otherwise eligible. A grantee that does not expend $500,000 in Federal awards is exempt from the single audit requirements of OMB Circular A-133 for that year. However, it must continue to conduct financial management reviews of its subgrantees, and records must be available for review and audit.

   A recipient of a Federal grant that is a pass-through entity is required, in accordance with paragraph 400(d) of OMB Circular A-133, to do the following with regard to its subrecipients: (1) identify the Federal award and funding source; (2) advise sub-recipients of all requirements imposed on them; (3) monitor subrecipient activities and compliance; (4) ensure subrecipients have A-133 audits when required; (5) issue decisions and ensure follow-up on audit findings in a timely manner; (6) where necessary, adjust its own records and financial statements based on audits; and (7) require subrecipients to permit access by the pass-through entity and auditors to records and financial statements, as necessary, for the pass-through entity to comply with A-133.

4. **Consultant Services.** Payments for consultant services under this grant will not exceed $750.00 per day (exclusive of any indirect expenses, travel, supplies and so on) unless procured consistent with 45 CFR § 2543.44.

C. THE OFFICE OF INSPECTOR GENERAL

CNCS's Office of Inspector General (OIG) conducts and supervises independent and objective audits, evaluations, and investigations of CNCS's programs and operations. Based on the results of these audits, reviews, and investigations, the OIG recommends policies to promote economy and efficiency and to prevent and detect fraud, waste, and abuse in CNCS's programs and operations.

The OIG conducts and supervises audits of CNCS grantees, as well as legislatively mandated audits and reviews. The legislatively mandated audits include the annual financial statement audit, and fulfilling the requirements of the Government Information Security Reform Act and its successor, the Federal Information Security Management Act. A risk-based approach, along with input received from CNCS management, is used to select grantees and grants for audit. The OIG hires audit firms to conduct some of its audits. The OIG audit staff is available to discuss its audit function, and can be reached at (202) 606-9390.

The OIG is available to offer assistance to AmeriCorps grantees that become aware of suspected criminal activity in connection with the AmeriCorps program. Grantees should immediately contact the OIG when they first suspect that a criminal violation has occurred. The OIG investigative staff is available to provide guidance and ensure that the appropriate law enforcement agency is notified, if required. The OIG may be reached by email at hotline@cncsig.gov or by telephone at (800) 452-8210.

D. PROGRAM INCOME

1. **General.** Income, including fees for service earned as a direct result of the grant-funded program activities during the award period, must be retained by the grantee and used to finance the grant's non-CNCS share.

2. **Excess Program Income**. Program income earned in excess of the amount needed to finance the grantee share must follow the appropriate requirements of 45 CFR § 2541.250, 45 CFR § 2543.24 or 2 CFR § 215.24, 2 CFR Part 225, 2 CFR Part 215, or 2 CFR Part 220 and be deducted from total claimed costs. Grantees that earn excess income must specify the amount of the excess in the comment box on the financial report.

3. **Fees for Service.** When using assistance under this grant, the grantee may not enter into a contract for or accept fees for service performed by members when:

   a. The service benefits a for-profit entity,
   b. The service falls within the other prohibited activities set forth in these grant provisions, or
   c. The service violates the non-displacement provisions of 45 U.S.C. § 12637.

4. **Full-Cost and Professional Corps Fixed Amount Grants.** The grantee must notify its Grants Officer if it earns program income in excess of the amounts needed to cover all expenditures under the grant. The Grants Officer will determine the disposition of the excess program income.

E. SAFETY

The grantee must institute safeguards as necessary and appropriate to ensure the safety of members. Members may not participate in projects that pose undue safety risks.

F. NON-DISCRIMINATION PUBLIC NOTICE AND RECORDS COMPLIANCE

1. **Public Notice of Non-discrimination**. The grantee must notify members, community beneficiaries, applicants, program staff, and the public, including those with impaired vision or hearing, that it operates its program or activity subject to the non-discrimination requirements of the applicable statutes. The notice must summarize the requirements, note the availability of compliance information from the grantee and CNCS, and briefly explain procedures for filing discrimination complaints with CNCS.

   Sample language is:
   It is against the law for organizations that receive federal financial assistance from the Corporation for National and Community Service to discriminate on the basis of race, color, national origin, disability, sex, age, political affiliation, or, in most cases, religion. It is also unlawful to retaliate against any person who, or organization that, files a complaint about such discrimination. In addition to filing a complaint with local and state agencies that are responsible for resolving discrimination complaints, you may

bring a complaint to the attention of the Corporation for National and Community Service. If you believe that you or others have been discriminated against, or if you want more information, contact:

(Name, address, phone number – both voice and TTY, and preferably toll free – FAX number and email address of the grantee) or
Office of Civil Right and Inclusiveness
Corporation for National and Community Service
1201 New York Avenue, NW
Washington, DC 20525
1-800-833-3722 (TTY and reasonable accommodation line)
(202) 565-3465 (FAX); eo@cns.gov (email)

The grantee must include information on civil rights requirements, complaint procedures and the rights of beneficiaries in member service agreements, handbooks, manuals, pamphlets, and post in prominent locations, as appropriate. The grantee must also notify the public in recruitment material and application forms that it operates its program or activity subject to the nondiscrimination requirements. Sample language, in bold print, is **"This program is available to all, without regard to race, color, national origin, disability, age, sex, political affiliation, or, in most instances, religion."** Where a significant portion of the population eligible to be served needs services or information in a language other than English, the grantee shall take reasonable steps to provide written material of the type ordinarily available to the public in appropriate languages.

2. **Records and Compliance Information.** The grantee must keep records and make available to CNCS timely, complete and accurate compliance information to allow CNCS to determine if the grantee is complying with the civil rights statutes and implementing regulations. Where a grantee extends federal financial assistance to subgrantees, the subgrantees must make available compliance information to the grantee so it can carry out its civil rights obligations.

3. **Obligation to Cooperate.** The grantee must cooperate with CNCS so that CNCS can ensure compliance with the civil rights statutes and implementing regulations. The grantee shall permit access by CNCS during normal business hours to its books, records, accounts, staff, members, facilities, and other sources of information as may be needed to determine compliance.

G. GRANT PRODUCTS

1. **Sharing Grant Products.** To the extent practicable, the grantee agrees to make products produced under the grant available at the cost of reproduction to others in the field.

2. **Acknowledgment of Support.** Publications created by members or grant-funded staff must be consistent with the purposes of the grant. The AmeriCorps logo may be included on such documents. The grantee is responsible for assuring that the following acknowledgment and disclaimer appears in any external report or publication of material based upon work supported by this grant:

"This material is based upon work supported by the Corporation for National and Community Service (CNCS) under AmeriCorps Grant No. ____. Opinions or points of view expressed in this document are those of the authors and do not necessarily reflect the official position of, or a position that is endorsed by, CNCS or the AmeriCorps program."

H. SUSPENSION OR TERMINATION OF GRANT

Regulations related to CNCS's authority to suspend or terminate this grant are contained in 45 CFR § 2540.400. In addition, a grantee may suspend or terminate assistance to one of its subgrantees, provided that such action affords the subgrantee, at a minimum, the notice and hearing rights described in 45 CFR § 2540.400.

I. FIXED AMOUNT AWARDS

Fixed Amount grants are not subject to the Federal Cost Principles. For Education Award (EAP) programs, the fixed federal assistance amount of the grant is based on the approved and awarded number of full-time (MSYs) members specified in the award. For full-cost and Professional Corps Fixed Amount grants the fixed federal assistance amount of the grant is based on the approved and awarded numbers of full-time members and their completion of their terms of service.

For EAPs, the final amount of grant funds that the grantee may retain is dependent upon the grantee's notifying CNCS's National Service Trust of the members that it has selected (but not limited to the number of members allotted to the grantee as specified in the award). All such members must carry out activities to achieve the specific project objectives as approved by CNCS. At closeout, CNCS will calculate the final amount of the grant based on Trust documentation. CNCS will recover any amounts drawn down by the grantee in excess of the final grant amount allowed based on member selection documentation in the Trust.

For all other Fixed Amount grants, the grantee may draw funds from the HHS Payment Management System based on the number of members who complete a full term of service or if the member leaves before completing service, a pro-rated amount based on hours served. Full-cost and Professional Corps programs may draw up to 20% of the funds within the first two months to cover start-up costs (recruitment and application, training, criminal history checks, etc.). Funds drawn after that should be based on the number of members on board at the time and the percentage of hours completed. Annually and at closeout, CNCS will calculate the final amount of the grant for the year or entire project period (at closeout) based on the number of successful completions of terms of service (as certified by the program) as well as the hours served in terms of service which were not certified as successfully completed.

J. TRAFFICKING IN PERSONS

This grant is subject to requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104).

1. Provisions applicable to a recipient that is a private entity.

    a. You as the grantee and your employees may not:
        i. Engage in severe forms of trafficking in persons during the period of time that the grant is in effect;
        ii. Procure a commercial sex act during the period of time that the grant is in effect; or
        iii. Use forced labor in the performance of the grant.
    b. We as the federal awarding agency may unilaterally terminate this grant, without penalty, if it,
        i. Is determined you have violated a prohibition in paragraph (a.) of this grant term; or
        ii. Has an employee who is determined by the agency official authorized to terminate the grant to have violated a prohibition in paragraph (a.) of this grant term through conduct that is either:
            (a.) Associated with performance under this grant; or
            (b.) Imputed to you using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR Part 2200.

2. Provisions applicable to a grantee other than a private entity. We as the federal awarding agency may unilaterally terminate this grant, without penalty, if it –

    a. Is determined to have violated an applicable prohibition of paragraph (1.)(a.) of this grant term; or
    b. Has an employee who is determined by the agency official authorized to terminate the grant to have violated an applicable prohibition in paragraph (1)(a.)(i.) of this grant term through conduct that is –
        i. Associated with performance under this grant; or
        ii. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 2200.

3. Provisions applicable to any grantee.

    a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (1.)(a.) of this grant term.
    b. Our right to terminate unilaterally that is described in paragraph (1.) and (2.) of this section:
        i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
        ii. Is in addition to all other remedies for noncompliance that are available to us under this grant.

c. You must include the requirements of paragraph (1.)(a.) of this grant term in any sub-grant you make to a private entity.

4. Definitions. For purposes of this grant term:

   a. "Employee" means either:
      i. An individual employed by you or a subgrantee who is engaged in the performance of the project or program under this grant; or
      ii. Another person engaged in the performance of the project or program under this grant and not compensated by you including, but not limited to, a volunteer or individual whose service are contributed by a third part as an in-kind contribution toward cost sharing or matching requirements.
   b. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
   c. "Private entity":
      i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
      ii. Includes:
         (a.) A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
         (b.) A for-profit organization.
   d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

K. CENTRAL CONTRACTOR REGISTRATION (CCR) and UNIVERSAL IDENTIFIER REQUIREMENTS

1. Requirement for Central Contractor Registration (CCR): Unless you are exempted from this requirement under 2 CFR § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:

   a. Must notify potential subrecipients that no entity (see definition in paragraph 3. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
   b. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. Definitions. For purposes of this award term:

   a. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at http://www.ccr.gov).
   b. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).
   c. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
      i. A Governmental organization, which is a State, local government, or Indian Tribe;
      ii. A foreign public entity;
      iii. A domestic or foreign nonprofit organization;
      iv. A domestic or foreign for-profit organization; and
      v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
   d. Subaward:
      i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
      ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ----.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
      iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
   e. Subrecipient means an entity that:
      i. Receives a subaward from you under this award; and
      ii. Is accountable to you for the use of the Federal funds provided by the subaward.

L. TRANSPARENCY ACT AWARD TERM (for Grants and Cooperative Agreements of $25,000 or More)

Reporting Subawards and Executive Compensation:

1. Reporting of first-tier subawards.

   a. Applicability. Unless you are exempt as provided in paragraph 4 of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 5. of this award term).
   b. Where and when to report.

i. You must report each obligating action described in paragraph 1.a. of this award term to http://www.fsrs.gov.
ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
c. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

2. Reporting Total Compensation of Recipient Executives.

a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--
i. the total Federal funding authorized to date under this award is $25,000 or more;
ii. in the preceding fiscal year, you received--
(a.) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards); and
(b.) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards); and
iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)
b. Where and when to report. You must report executive total compensation described in paragraph (2.)(a.) of this award term:
i. As part of your registration profile at http://www.ccr.gov.
ii. By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Subrecipient Executives.

a. Applicability and what to report. Unless you are exempt as provided in paragraph 4. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--
i. in the subrecipient's preceding fiscal year, the subrecipient received--
(a.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
(b.) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards; and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

b. Where and when to report. You must report subrecipient executive total compensation described in paragraph 3.a. of this award term:
   i. To the recipient.
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

4. Exemptions. If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:
   a. Subawards, and
   b. The total compensation of the five most highly compensated executives of any subrecipient.

5. Definitions. For purposes of this award term:
   a. Entity means all of the following, as defined in 2 CFR Part 25:
      i. A Governmental organization, which is a State, local government, or Indian tribe;
      ii. A foreign public entity;
      iii. A domestic or foreign nonprofit organization;
      iv. A domestic or foreign for-profit organization;
      v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
   b. Executive means officers, managing partners, or any other employees in management positions.
   c. Subaward:
      i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
      ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ---- .210 of the attachment to OMB Circular A-133, ``Audits of States, Local Governments, and Non-Profit Organizations").
      iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
   d. Subrecipient means an entity that:
      i. Receives a subaward from you (the recipient) under this award; and
      ii. Is accountable to you for the use of the Federal funds provided by the subaward.

e. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):
   i. Salary and bonus.
   ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
   v. Above-market earnings on deferred compensation which is not tax-qualified.
   vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Corporation for NATIONAL & COMMUNITY SERVICE
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Grant Program Civil Rights and Non-Harassment Policy

The Corporation for National and Community Service (CNCS) has zero tolerance for the harassment of any individual or group of individuals for any reason. CNCS is committed to treating all persons with dignity and respect. CNCS prohibits all forms of discrimination based upon race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service. All programs administered by, or receiving Federal financial assistance from CNCS, must be free from all forms of harassment. Whether in CNCS offices or campuses, in other service-related settings such as training sessions or service sites, or at service-related social events, such harassment is unacceptable. Any such harassment, if found, will result in immediate corrective action, up to and including removal or termination of any CNCS employee or volunteer. Recipients of Federal financial assistance, be they individuals, organizations, programs and/or projects are also subject to this zero tolerance policy. Where a violation is found, and subject to regulatory procedures, appropriate corrective action will be taken, up to and including termination of Federal financial assistance from all Federal sources.

Slurs and other verbal or physical conduct relating to an individual's gender, race, ethnicity, religion, sexual orientation or any other basis constitute harassment when it has the purpose or effect of interfering with service performance or creating an intimidating, hostile, or offensive service environment. Harassment includes, but is not limited to: explicit or implicit demands for sexual favors; pressure for dates; deliberate touching, leaning over, or cornering; offensive teasing, jokes, remarks, or questions; letters, phone calls, or distribution or display of offensive materials; offensive looks or gestures; gender, racial, ethnic, or religious baiting; physical assaults or other threatening behavior; or demeaning, debasing or abusive comments or actions that intimidate.

CNCS does not tolerate harassment by anyone including persons of the same or different races, sexes, religions, or ethnic origins; or from a CNCS employee or supervisor; a project, or site employee or supervisor; a non-employee (e.g., client); a co-worker or service member.

I expect supervisors and managers of CNCS programs and projects, when made aware of alleged harassment by employees, service participants, or other individuals, to immediately take swift and appropriate action. CNCS will not tolerate retaliation against a person who raises harassment concerns in good faith. Any CNCS employee who violates this policy will be subject to discipline, up to and including termination, and any grantee that permits harassment in violation of this policy will be subject to a finding of non-compliance and administrative procedures that may result in termination of Federal financial assistance from CNCS and all other Federal agencies.

Any person who believes that he or she has been discriminated against in violation of civil rights laws, regulations, or this policy, or in retaliation for opposition to discrimination or participation in discrimination complaint proceedings (e.g., as a complainant or witness) in any CNCS program or project, may raise his or her concerns with our Office of Civil Rights and Inclusiveness (OCRI). Discrimination claims not brought to the attention of OCRI within 45 days of their occurrence may not be accepted in a formal complaint of discrimination. No one can be required to use a program, project or sponsor dispute resolution procedure before contacting OCRI. If another procedure is used, it does not affect the 45-day time limit. OCRI may be reached at (202) 606-7503 (voice), (202) 606-3472 (TTY), eo@cns.gov, or through www.nationalservice.gov.

5/15/2012
Date

Wendy Spencer, Chief Executive Officer

AmeriCorps State and National Policy Frequently Asked Questions (FAQs)

Contents

AmeriCorps State and National Policy Frequently Asked Questions (FAQs) 1
Disclaimer 1
Where to Find Information Resources 1
A. Organizational Eligibility and Grant Application 1
B. Recruiting and Selecting Members 3
C. Supervising Members 7
D. Program Management 34
E. For State Commissions 39
F. Financial Management 39

Disclaimer
This website does not supersede any of the requirements established by the Corporation's regulations; the terms, conditions, and provisions of an AmeriCorps grant or cooperative agreement; or the standard federal requirements applicable to all federal grants. It is intended as a resource to help state commissions, state programs, national parent organizations, and national sites establish and maintain sound operations in compliance with federal and state statutes, regulations, provisions, and policies.

Where to Find Information Resources
The AmeriCorps statute, the National and Community Service Act (NCSA), the AmeriCorps regulations, and the AmeriCorps State and National grant provisions are available in keyword searchable format
here: http://www.americorps.gov/for_organizations/manage/index.asp.

Relevant information on policy matters are communicated via e-mail and posted on the Communications Center. You can subscribe to the Communications Center and receive an e-mail message informing you of new material posted there. If you have questions about these Policies and Policy FAQs, please address them to PolicyQuestions@cns.gov or call (202) 606-6930.

For the purposes of these FAQs, "AmeriCorps" refers to AmeriCorps State and National grantees only. The term grantee is used to connote either grantee or subgrantee, as appropriate, throughout these FAQs.

A. ORGANIZATIONAL ELIGIBILITY AND GRANT APPLICATION
A. 1. How do I request a copy of an AmeriCorps grant application?
All funded AmeriCorps State and National grant applications are now posted on our Open Government page, here: http://www.nationalservice.gov/about/open/grants.asp.

A. 2. Is a 501(c)(6) organization eligible to apply for and receive an AmeriCorps grant?

As long as the 501(c)(6) organization does not engage in lobbying activities (as defined under the Lobbying Disclosure Act of 1995), it may apply for and is eligible to receive federal grant funds. If it does engage in lobbying activities, it is ineligible to receive federal grant funds.

A. 3. Is a 501(c)(4) organization eligible to apply for and receive an AmeriCorps grant?
As long as the 501(c)(4) organization does not engage in lobbying activities (as defined under the Lobbying Disclosure Act of 1995), it may apply for and is eligible to receive federal grant funds. If it does engage in lobbying activities, it is ineligible to receive federal grant funds.

A. 4. Must an organization have 501(c)(3) status to be granted funds by the Corporation? May an organization receive AmeriCorps funds even though its application for 501(c)(3) status has not been approved? And, is there a one-year waiting period after approval of 501(c)(3) status before an award can be made?
The Corporation does not require 501(c)(3) approval as long as your organization is recognized as a nonprofit organization by your state. Hence, the status of any federal application for 501(c)(3) status is immaterial, and there is no one-year waiting period.

A. 5. May a for-profit entity apply for an AmeriCorps grant, or serve as a service site?
A for-profit entity is not eligible to apply for an AmeriCorps grant or serve as a service site. An AmeriCorps member may not provide a direct benefit to a for-profit entity. If the grantee can establish that the AmeriCorps member will actually be providing a direct benefit to someone other than the for-profit entity—for example, to the community, children, or parents—and that the for-profit entity is only a secondary beneficiary of the service, then service at a for-profit site may be allowable. The grantee must also ensure that the members do not displace employees.

A. 6. May the Corporation make grants to other federal agencies?
The Serve America Act amends the NCSA to explicitly prohibit grantmaking to other federal agencies in Subtitle C Section 1301. However the Act states that "The Corporation may enter into an interagency agreement (other than a grant agreement) with another federal agency to support a national service program carried out or otherwise supported by the agency. The Corporation, in entering into the interagency agreement may approve positions as approved national service positions for a program carried out or otherwise supported by the agency."

A. 7. May an organization use grant funds for the sole purpose of providing individuals with referrals to other federal or state assistance programs funded in part by the federal government?
No. The Serve America Act amends the NCSA to prohibit an organization from using grant funds for the sole purpose of providing individuals with referrals to other federal or state assistance programs funded in part by the federal government.

A. 8. May an organization that has violated a federal statute apply for funding under Subtitle C?

No. The Serve America Act amends the NCSA to disqualify any organization that has violated a federal statute from receiving assistance under Subtitle C.

A. 9. Must a service sponsor submit a written concurrence from a labor union if there are employees in the area performing the same or similar work as that proposed to be carried out by AmeriCorps members?
Under Sec. 130(g), if employees of the service sponsor are (i) "engaged in the same or substantially similar work" as that proposed to be carried out by AmeriCorps members, and (ii) represented by a labor union, then the service sponsor must obtain a written concurrence from the labor union and submit that concurrence along with the application.

Under Sec. 131(c), if there are (i) "*employees in the area* who are engaged in the same or similar work as that proposed to be carried out" by the AmeriCorps members, and (ii) those employees are represented by a labor union, then the program applicant must provide an assurance on its application that it will consult with that labor union prior to placing the AmeriCorps members. At some point before the program places the AmeriCorps members (not necessarily before the program applies for a grant), the applicant must have a conversation with the labor union and let them know what the program will be doing. The program doesn't need to get the union's concurrence, or consent, unless the labor union is representing the applicant's own employees, and those employees are performing "the same or substantially similar" work as the AmeriCorps members.

B. Recruiting and Selecting Members

B. 1 May an AmeriCorps program director recruit family members to become AmeriCorps members?
There is nothing in the Corporation's statute, regulations, or provisions related to the recruitment of family members. However, there may be state laws that cover this issue. If a grantee wants to disallow the recruitment of family members, it may impose requirements that are more stringent than Corporation requirements. Grantees should consult local counsel or the State Attorney General for more information.

B. 2. May I charge an application fee to cover the administrative overhead of recruiting?
Charging an application fee to a prospective member to apply to serve as an AmeriCorps member is not allowed. Programs may charge application fees to prospective members who are applying to their educational institution or participating in their academic program if such fees are required of all applicants, but not for applying to serve as an AmeriCorps member. This policy is in alignment with federal policy on student aid.

B. 3. What are the requirements for a person to be eligible to serve as an AmeriCorps member?
The National and Community Service Act and our regulations establish eligibility requirements for AmeriCorps members. See 42 U.S.C. § 12591; 45 CFR § 2522.200. To confirm citizenship status, applicants must produce the original of one of the forms of

primary documentation listed in the regulations. Please note that the Form I-9, used to document eligibility for employment, is not sufficient to document citizenship.

The Corporation does not require programs to make and retain copies of the actual documents used to confirm eligibility as long as the program has a consistent practice of identifying the documents that were reviewed and maintains a record of the review.

A consistent practice for documenting eligibility should:
Identify the specific original document reviewed.
Identify the eligibility criterion or criteria that the document confirms.
Include any identification number for the document reviewed.
Include the signature of the reviewer confirming the review and the date of the review.

Birth certificates, driver's licenses, and passports are examples of documents that confirm a member is old enough to serve. In some cases, the same document, such as a birth certificate issued by one of the states, can be used to confirm both age and citizenship.

B. 4. How does a grantee obtain approval for an alternative form of documentation of citizenship status?
The Corporation's regulations at 45 CFR 2522.200 (c) and (d) include a list of documents that programs may consider to determine citizenship, lawful permanent resident alien, or national status. If a member wishes to use a document that is not on the list, the grantee must seek written approval from the Corporation to do so. The Office of Grants Management is responsible for determining grants compliance questions, including member eligibility issues.

B. 5. Is an individual granted asylee or refugee status eligible to serve in AmeriCorps?
No. In order to be eligible to serve as an AmeriCorps member, individuals must be citizens or lawful permanent residents with the appropriate documentation.

B. 6. Must an individual be a U.S. citizen, U.S. national, or lawful permanent resident alien at the time of enrollment in order to be eligible to participate in AmeriCorps?
Yes, an individual must be a U.S. citizen, U.S. national, or lawful permanent resident alien at the time of enrollment in order to become an AmeriCorps member. It is not sufficient that the individual's application for citizenship status is pending at the time of enrollment. If a member's lawful permanent resident alien status expires during the member's term of service, you must obtain proof of renewal from the member.

B. 7. Is a Certificate of Indian Blood sufficient to establish citizenship for the purpose of eligibility to serve as an AmeriCorps member?
No. A Certificate of Indian Blood is not sufficient to establish U.S. citizenship for the purpose of eligibility to serve as an AmeriCorps member.
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B. 8. Is it allowable to use an expired U.S. passport as one of the eligibility documents checked in member's files?

Yes. Consistent with policy adopted by the Department of Homeland Security, Office of Citizenship and Immigration Services, a U.S. passport establishing citizenship status may be expired or unexpired.

B. 9. Does a hospital birth certificate suffice for acceptable eligibility documentation or does it have to be a state vital records birth certificate?
When the regulations refer to a birth certificate they refer to a legal document certified by and registered with a State's office of vital statistics (often through local vital statistic branches). Although the official document that states the child's name, place of birth, parents' names, and so forth is often filled in at the hospital, it should not be confused with documents distributed by some hospitals that have no legal significance.

B. 10. May an AmeriCorps grantee use AmeriCorps grant funds to pay for copies of birth certificates for potential members?
Yes. Because the eligibility documentation requirements to be an AmeriCorps member arise from the program requirements, the cost is allocable and typically would be deemed necessary, reasonable, and allowable especially if members are low-income and purchasing a copy of a birth certificate is a barrier to participation.

B. 11. How does a grantee determine and document educational attainment eligibility for membership in AmeriCorps?
Programs may accept a self-certification from the potential member as proof of high school graduation. Applicants do not have to produce a high school diploma or an equivalency certificate nor are programs required to retain a copy of the high school diploma or other documents confirming education level, such as an official transcript. However, a self-certification must include the person's signature, under penalty of law, specifically certifying that he or she has completed high school or its equivalent or will obtain a high school diploma prior to using the education award.

B. 12. Are members required to acquire a high school diploma or equivalent by the time they want to use the education award or by the time they finish their term of service?
Members are required to acquire a high school diploma or equivalent by the time they want to use their education award. However, some programs include achieving high school equivalency as a purpose of the program, and include GED classes during the program year. For those programs, successful completion of a term of service may include completion of work resulting in a high school diploma or equivalent.

B. 13. May a 16-year-old serve with a summer AmeriCorps program between his junior and senior years in high school?
No. The National and Community Service Act require that an AmeriCorps member be 17 years old when the term of service begins. The statute provides an exception for 16-year-olds if the 16 year old is an out-of-school youth and serving in an AmeriCorps youth corps program. An out-of-school youth is a youth who has dropped out of high-school. The definition does not include someone on summer break who is still enrolled in high school.

Reference: 42 U.S.C. 12591; 42 U.S.C. 12511(16); 45 CFR. § 2510.20; 45 CFR. § 2522.200(a)

B. 14. The AmeriCorps grant provisions state that in order for an individual who cannot meet the educational attainment requirements to serve as an AmeriCorps member, he or she must be "determined through an independent assessment conducted by the Program to be incapable of obtaining a high school diploma or its equivalent." How is this independent assessment conducted?
It is up to the sub-grantee of a state commission or the National Direct parent organization to identify the independent expert who will make the assessment. The expert(s) conducting the assessment must have legitimate expertise to make a reliable and independent determination of why an individual cannot get a high school diploma or a GED. Examples of such individuals include education specialists, psychologists, and doctors. The expert's independent assessment must identify valid reason(s), such as a learning disability, that explains why the individual cannot obtain a high school diploma or GED.

B. 15. How can an AmeriCorps program document that an applicant satisfies the member eligibility requirements related to educational attainment if the applicant has been homeschooled?
The AmeriCorps regulations (45 CFR § 2522.200) state that self-certification of high school diploma or its equivalent is sufficient. The program need not require any further documentation as long as the member certifies under penalty of law that he or she has a high school diploma or its equivalent, or agrees to obtain their high school diploma before using the education award.

B. 16. If an applicant for a position as an AmeriCorps member was adjudicated or held responsible as a juvenile offender of a criminal offense under a state law, but the state expunged the juvenile's record so that it was as if it never happened, can the applicant mark "No" on an application which asks if the applicant has ever been adjudicated or held responsible as a juvenile offender of any criminal offense by a civilian court or by authorities?
If under state law, the expungement of the record means that it's as if the offense never happened, and the applicant could under state law answer "No," then the applicant may answer "No" on the AmeriCorps application.

B. 17. May an individual convicted of murder serve as an AmeriCorps member?
No. The Serve America Act amends the NCSA to prohibit an individual convicted of first-degree murder from serving as an AmeriCorps member or employment by a grant-funded program.

B. 18. May an AmeriCorps program choose only to enroll as members individuals with disabilities?
This is not a viable program design, as it would entail asking questions in the member selection process to determine whether or not applicants have a disability. Such questions are not permitted.

Programs are allowed to ask all applicants what, if any, experience they have had serving or working with those with disabilities, and/or what, if any, training or experience they have in identifying and planning for the needs of the disabled or elderly. Even if the program uses these kinds of questions, they may find equally or better-qualified applicants who don't necessarily have or disclose a disability. A program may also focus their recruiting on organizations that serve those with disabilities, state that the program will be working with a specific population, and show persons with disabilities in their outreach materials.
Reference: 2003 Disability Inclusion Handbook

B. 19. If an applicant for an AmeriCorps position lies on the application and the program does not select him or her on that basis, what can the program do to notify other programs about this applicant?
No formal mechanism exists for a program to inform other programs about this potential applicant. If the program believes the applicant committed fraud, the program may refer the matter to the Corporation's Office of Inspector General by calling the IG Hotline (800) 452-8210 or e-mailing hotline@cncsoig.gov.

B. 20. Where can I find FAQs on Criminal Background Checks?
These FAQs can be found here:
http://nationalserviceresources.org/files/Frequently_Asked_Questions_July_16_Correction_2010.pdf

C. Supervising Members

C. 1. Are AmeriCorps members employees?
AmeriCorps members are not employees of the AmeriCorps program or of the federal government. The definition of "participant" in the National and Community Service Act of 1990 as amended applies to AmeriCorps members. As such, "a participant (member) shall not be considered to be an employee of the organization receiving assistance under the national service laws through which the participant (member) is engaged in service" (42 U.S.C. 12511(30) (B)). Moreover, members are not allowed to perform an employee's duties or otherwise displace employees.

For the limited purposes of the Family and Medical Leave Act of 1993, the member may be considered an eligible employee of the project sponsor. The Family and Medical Leave Act's requirements as they apply to AmeriCorps Programs are contained in 45 CFR 2540.220(b).

C. 2. Must a grantee conduct a member orientation, and if so what should be included?
The grantee must conduct an orientation for members. This orientation should be designed to enhance member security and sensitivity to the community. Orientation should cover member rights and responsibilities, including the Program's code of conduct, prohibited activities (including those specified in the regulations), requirements under the Drug-Free Workplace Act (41 U.S.C. 701 *et seq*.), suspension and termination

from service, grievance procedures, sexual harassment, other non-discrimination issues, and other topics as necessary.

C. 3. Should the grantee encourage members to register and vote?
The grantee should encourage all eligible members to register and vote. However, the grantee is prohibited from requiring members to register or to vote, and from attempting to influence how members vote. Members who are unable to vote before or after service hours should be allowed to do so during their service time without incurring any penalties. The site supervisor should determine the length of absence.

C. 4. May an AmeriCorps member serve on jury duty?
The grantee must allow AmeriCorps members to serve on a jury without being penalized for doing so. During the time AmeriCorps members serve as jurors, they should continue to receive credit for their normal service hours, a living allowance, health care coverage and, if applicable, child care coverage regardless of any reimbursements for incidental expenses received from the court.

C. 5. May an AmeriCorps member provide abortion services and/or referrals?
No. Beginning on October 1, 2009 members—including members who enrolled prior to that date—may not provide abortion services or make referrals for such services.

C. 6. What must a program do to enable members to complete their terms of service?
A program should make every effort to enroll members so that each member has a reasonable expectation of completing his/her term of service by the end of the program's project period. Should a program not be renewed, a member who was scheduled to continue in a term of service may either be placed in another program where feasible, or a member may receive a prorated education award if the member has completed at least 15% of the service hour requirement. Serving less than 15% of a full term of service does not count as a term of service.

C. 7. What is the policy on electronic storage of member files?
Typically, programs store member eligibility documentation, timesheets, and other relevant documents in paper files which become cumbersome to maintain and store. Sections 1703 and 1705 of the Government Paperwork Elimination Act state that electronic records are not to be denied legal effect, validity, or enforceability merely because they are in electronic form.

This policy allows AmeriCorps State and National grantees the option of storing member files in electronic formats, when practicable. It also provides minimum standards that such systems must meet.

Minimum Standard for Electronic Document Storage:
A program may store member files electronically if the program can ensure that the validity and integrity of the record is not compromised. The Corporation will recognize electronically stored files where the electronic storage procedures and system provide for the safe-keeping and security of the records, including:

Sufficient prevention of unauthorized alterations or erasures of records;
Effective security measures to ensure that only authorized persons have access to records;
Adequate measures designed to prevent physical damage to records;
A system providing for back-up and recovery of records;
and
The electronic storage procedures and system provide for the easy retrieval of records in a timely fashion, including:
Storage of the records in a physically accessible location;
Clear and accurate labeling of all records; and
Storage of the records in a usable, readable format.

NOTE: All current grant provisions regarding access restrictions, security, privacy, and retention of paper records, also apply to electronic records.

C. 8. May I use an electronic timekeeping system as my system of record?
The Government Paperwork Elimination Act of 1998 (GPEA) states that electronic records and related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. (Pub. L. 105-277, Title XVII).

CNCS policy allows AmeriCorps State and National grantees to use electronic timekeeping systems as the system of record. It also provides minimum standards that such systems must meet.

Minimum Standard for Electronic Timekeeping Systems:
Electronic timekeeping systems are allowed as the system of record when three conditions are met:
1. A written policy is in effect establishing the use of electronic timekeeping system as your system of record; and,
2. A secure, verifiable electronic signature system (a) identifies and authenticates a particular person as the source of the electronic signature; and (b) indicates such person's approval of the information contained in the electronic message.
3. Once appropriate electronic signatures have been applied, no changes may be made unless there is a clear, auditable record of the revision.

All current grant provisions including access restrictions, security, privacy, and retention of paper records, also apply to records maintained in an electronic timekeeping system.

The use of regular e-mail to communicate approval is not a secure, verifiable electronic signature system.

C. 9. What are the requirements for time and attendance reporting for Professional Corps?
A Professional Corps operating site will not be required to maintain the member timesheets that are required of AmeriCorps grantees, if the Corporation approves the Professional Corps use of an alternative professional timekeeping system that is consistent with the requirements under the applicable OMB cost principles.

A Professional Corps legal applicant has the option, at the start of each grant cycle, to request a special condition that will release the program from maintaining separate weekly timesheets for their Professional Corps AmeriCorps members. This does not release them from accounting for time and attendance through the normal process in place at the service site for other professionals.

In order to qualify, the legal applicant must demonstrate and document that its members will meet the minimum number of hours required to earn the appropriate education award by fulfilling the normal duties of the profession, or by a combination of normal duties and other professional opportunities sponsored by the program. The legal applicant must also describe how its service sites will account for time and attendance, and how they will certify total hours served at the completion of each member's term. The procedures must include certification by both the member and the member's supervisor.

The Professional Corps program must submit its request for this special condition to the designated Corporation program officer. If recommended by the deputy director of AmeriCorps, the Office of Grants Management will determine if the Professional Corps request adequately documents that the program design and the planned professional activities will result in sufficient hours to earn the appropriate education award, and describes the method of certification. Upon approval, the Office of Grants Management will add the special condition to the grant award.

If the request for this special condition is approved, the Professional Corps program will require that its members follow the time and attendance practices as approved in the request. At the end of each member's term of service, the program must certify that the member has completed all professional obligations and has served at least the minimum required number of hours to earn the appropriate education award.

Once a Professional Corps grantee is approved for the special condition, the grantee does not have to apply again when recompeting for funds if the grantee plans to continue to use the same procedures that were previously approved. Upon approval for funding, the grantee is required to send a request to their Program Officer and Grants Officer in this format to continue operation under the special condition:

[Name of grantee} requests that the Professional Corps timekeeping special condition be added to the new Grant Award [number of grant award]. [Name of grantee] will continue to follow the timekeeping procedure that was previously approved and will certify that members have completed the minimum required hours excluding sick and vacation days as approved in Grant Award [number of grant award originally special conditioned].

Professional Corps grantees that do not apply for the special condition, or that apply and are not approved, will be required to meet the timekeeping requirements in the grant provisions applicable to grantees that do not qualify for the special condition.

C. 10. We pay our living allowances on a monthly basis. How should we handle situations in which members come on board late in the month or exit early in the month at the end of their term?
You should establish a written policy that is reasonable. For example, if a member comes on board within the first two weeks of the month, you might set policy that gives them the entire living allowance. If they start service later than that, you could prorate the amount based on the number of days in the month they will serve. The same would hold true for the end of service. If they leave within the first two weeks of the month, their living allowance could be based on the number of days in the month they served. If they serve over the 2-week cut-off, they could get the full living allowance. You can establish different cut-off points as long as they are reasonable, documented in policy, and followed consistently.

C. 11. May a grantee use funds from another federal agency to pay for member living allowances?
Yes. The single match requirement does not include a prohibition against using other federal funds to support living allowance costs. However, grantees should ensure that the other federal agency is aware that its funds will be used to support the AmeriCorps living allowance..

C. 12. If a grantee uses funds other than the Corporation's to pay the living allowance, is the grantee still required to follow the Corporation's regulations and provisions regarding living allowances?
Yes. If the living allowance is part of the grant, the fact that the living allowance is paid out of Corporation funds or match does not change the grantee's duty to abide by the regulations and provisions regarding living allowances.

C. 13. Can a program use a debit card to pay a members living allowance?
The Corporation has two priorities regarding member payment: (1) that the programs are following their own accounting policies and procedures and (2) that the members have access to their funds with the ease of a regular checking account to meet their financial obligations. The Corporation does not prohibit or oppose program use of debit cards for member payment.

C. 14. What are the definitions of the various terms of service?

FAQ Number: 07 Prov. IV. E. 1 Rev 11.8.2011

Each Program must, at the start of the term of service, establish the guidelines and definitions for the successful completion of the program year, ensuring that these program requirements meet the Corporation's service hour requirements as defined below:

Full-time members. Members must serve at least 1700 hours during a period of not more than one year.

Half-time members. Half-time members must serve at least 900 hours during a period of one or two years as indicated in the approved budget.

Reduced half-time members. Reduced half-time members must serve at least 675 hours during a period of not more than one year.

Quarter-time members. Quarter-time members must serve at least 450 hours during a period of not more than one year.

Minimum-time members. Minimum time members must serve at least 300 hours during a period of not more than one year.

C. 15. If a member receives a Federal Work Study award does this affect their AmeriCorps living allowance?
A program with a member who receives a federal Work-Study award is required by the SAA to reduce the member's living allowance by the amount of the work-study award.

C. 16. A program includes work-study students who are compensated at different rates for their work-study hours. Is it permissible to provide different living allowance amounts to members within the same program?
To ensure equitable treatment of members, the Corporation discourages grantees from providing different living allowance amounts to AmeriCorps members with the same position description serving in the same program. However, a uniform living allowance amount for each and every member in a program is not absolutely required. Grantees should discuss the specifics of their proposed member support framework with their program and grants officers at the Corporation.

C. 17. Does federal law exclude AmeriCorps living allowance payments from state pension plan contribution requirements?
The Corporation's position is that mandatory contributions from the living allowance to a retirement system conflicts with the federal statutory requirement that AmeriCorps members receive a specific living allowance amount. The national service laws specify how much an AmeriCorps member is entitled to receive as a living allowance when serving in AmeriCorps. The laws also specify what must and what may be deducted from the living allowance. State pension plan contributions are not among the deductions that may be made from the living allowance. The member's living allowance is a federal benefit, as opposed to a wage. Consequently, deductions from the living allowance prior to the member receiving it are not permitted. In addition, a member is not considered to be an employee of the program in which the member is enrolled, and thus generally not subject to employment laws, unless specifically authorized by statute. 42 U.S.C. § 12511(17)(B).

In short, while there is no specific exemption in the national service laws for state pension plan contributions, the statute's failure to specify that such contributions may or

must be made from the living allowance means that the living allowance is not available for that purpose.

C. 18. May a program temporarily withhold a member's living allowance if the member has failed to submit his or her timesheets for two or more weeks?
A program may temporarily withhold a member's living allowance if the member has failed to submit timesheets. The member agreement must clearly state the policy, and the withholding must be temporary, and not result in the program docking the member's living allowance.
Reference: 2007 AmeriCorps grant provisions IV. H.

C. 19. Can a member living allowance be garnished by law?
Any type of garnishment of the federal portion of a member's living allowance is not permitted due to issues of sovereign immunity. Sovereign immunity protects the property interests of the United States from suits to which it has not consented. The federal government has a continuing property interest in AmeriCorps grant funds until they are expended in accordance with the grant's terms. With respect to the living allowance, the Corporation has a property interest in the federal share of the member's living allowance, until the AmeriCorps member actually receives it, and this property interest is protected by sovereign immunity. Only Congress may waive this immunity.

Whether or not the non-federal portion of the living allowance–i.e. the funds provided as match at the program level–is subject to garnishment is a state law issue. Because the Corporation is not a party to this action, and because it involves application of state law, programs should consult their own local counsel.
Reference: 42 U.S.C. § 12594

C. 20. Section 2522.240(b) of the Corporation's regulations state that any individual who participates full-time in an AmeriCorps subtitle C program, including in a program that receives "education awards only," must receive a living allowance. Does this mean full-time Education Award Programs (EAPs) must provide a living allowance?
No. The Corporation's annual appropriation contains statutory language that overrides the regulations. The regulation applied when the EAP program was funded under subtitle H and, thus, subject to different rules than subtitle C programs. When Congress directed the Corporation to fund the EAP program out of subtitle C, it included language in the appropriation to continue exempting the EAP program from living allowance and match requirements.
Reference: 45 CFR § 2522.240; P.L. 110-5, Division B, Revised Continuing Appropriations Resolution 2007 (January 4, 2007).

C. 21. If an EAP chooses to pay a living allowance, are they held to the statutory minimum and maximum?
The minimum does not apply. Congress explicitly exempted EAPs from living allowance requirements in appropriations language. Therefore if EAPs are exempted from paying a living allowance at all, the "minimum" that they have to provide is $0. However, EAPs

that do provide living allowances (other than Professional Corps) are required to comply with the maximum.

C. 22. May a Professional Corps provide a living allowance to its members in excess of the statutory maximum living allowance for most AmeriCorps programs?
The NCSA provides an exception to the maximum living allowance for certain Professional Corps programs. Under the NCSA, a Professional Corps program is one that recruits and places qualified participants in positions "as teachers, nurses, and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;" and "that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits of the participants."

Professional corps programs that meet this definition may provide a living allowance (or salary) in excess of the maximum statutory living allowance.

Reference: 42 U.S.C. §§ 12572(a)(8) and 12594(c); 45 CFR § 2522.240(b)(2).

C. 23. Is the grantee required to provide unemployment insurance?
The U.S. Department of Labor ruled on April 20, 1995 that federal unemployment compensation law does not require coverage for members because no employer-employee relationship exists. The grantee may not charge the cost of unemployment insurance taxes to the grant unless mandated by state law. Programs are responsible for determining the requirements of state law by consulting their state commission, legal counsel or the applicable state agency. AmeriCorps State and National grantees must coordinate with their state commissions to determine a consistent state treatment of unemployment insurance requirements.

C. 24. What are allowable minor disciplinary actions?
The grantee may temporarily suspend or impose a fine on a member for minor disciplinary reasons, such as chronic tardiness, as outlined in the conditions of the member agreement.

When a member is suspended as a minor disciplinary action, should he or she continue to accrue service hours and collect the living allowance?
The period of suspension does not count toward a member's required service hours. Further, members who are suspended for minor disciplinary reasons may not receive a living allowance for the suspension period.

How should fines be collected as a minor disciplinary action?
If determined to be necessary for improvements in member performance or attendance, the grantee may impose a reasonable fine on members for minor disciplinary problems consistent with the member agreement. The fines may not be calculated on an hourly basis. For example, a member who is an hour late may not be fined an hour's worth of

living allowance. Instead, the grantee should establish a written policy on fines, which is not linked to an hourly rate.

The grantee may deduct fines from that portion of the member's living allowance that is paid by non-federal funds. Before making any deductions, the grantee should consider how this might affect the status of members under employment laws, including minimum wage and unemployment compensation. Further, a grantee that deducts in this fashion may be required to provide additional matching funds.

C. 25. What happens when an AmeriCorps member is charged with a crime?
An AmeriCorps member who is officially charged with a violent felony, or with the sale or distribution of a controlled substance during a term of service will have his/her service suspended without a living allowance and without receiving credit for hours missed. The member may be reinstated into AmeriCorps service if he/she is found not guilty or if the charge is dismissed. If an AmeriCorps member who has been cleared of such charges is unable to complete his/her term of service within one year, he/she may accept a pro-rated education award as long as he/she has completed at least 15% of his/her service.

An AmeriCorps member who is convicted of a criminal charge as described above must be terminated for cause from the program, and he/she is not eligible for any portion of an education award.

C. 26 How should a program handle a situation when a member serves no hours during a pay period?
Situations in which a member serves zero hours during a pay period should be very rare and the member should be suspended if there are periods in which no service is performed. Otherwise, since the living allowance is to be distributed evenly over the service period, it should be paid regardless of the number of hours. However, a member's agreement could also stipulate conditions under which the living allowance is paid and what the member should do if a period occurs in which no hours are served. The agreement could also stipulate the minimum number of hours required during each service period.

C. 27. If a member is unable to complete their term due unexpected time demands due to employment, can the member to continue to serve after the dates in the member agreement in order for the member to successfully complete service and receive the education award?
Yes, you may amend the agreement and allow the member to complete his or her term, provided the extension does not exceed the term limits, e.g. one year for full-time.

C. 28. May an AmeriCorps member use AmeriCorps service to satisfy an internship requirement for college?
There is no rule to prohibit this type of arrangement. In fact, the regulations describe, as one type of program eligible for AmeriCorps funds, "campus-based programs" that "provide substantial service in a community during a school term and during summer or other vacation periods." 45 CFR 2522.100(e). While this type of arrangement is not

precluded, programs should consult with their AmeriCorps program officer on a case-by-case basis to ensure that the member is still meeting an unmet need.

C. 29. Is a member who is released for cause eligible to serve a subsequent term?
Grantees may release members from participation for two reasons: (a) for compelling personal circumstances; and (b) for cause. See 45 CFR §2522.230 for requirements.
As stated in the AmeriCorps regulations, any individual released for cause who thereafter applies to serve in any AmeriCorps program must disclose the fact that he/she was released for cause to the program to which the individual is applying. Failure to disclose that the individual was released for cause from another AmeriCorps program will make the individual ineligible to receive the AmeriCorps education award.
Eligibility for ssubsequent term. A participant will only be eligible to serve a second or additional term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service in accordance with the requirements of paragraph (d) of this section. Eligibility for a second or further term of service does not guarantee a participant selection or placement.

C. 30. Can the member who files a grievance following termination receive an education award?
If the grievance process determines in favor of the member, then it would be appropriate for the member to receive his or her education award as part of a settlement.

C. 31. What happens if a program cannot afford the costs of going through the grievance process? If the program has access to non-federal funds to settle the grievance, may the program use them to do so?
The program should contact its state commission or National Direct parent organization for assistance. Programs are expected to be able to implement the grievance procedure within the administrative funding of the grant. If extraordinary expenses are incurred, involving outside expertise, authority to re-budget to pay such expenses should be sought from the Corporation Grants office, which will review any exceptional legal or other expenses related to carrying out a full grievance process and a settlement.

C. 32. May an individual who applies to be an AmeriCorps member but who is not selected file a grievance through a grantee's grievance process?
By law, any "interested" individual, including participants, labor organizations, and applicants, may file a grievance with a program.

C. 33. An AmeriCorps member was terminated for cause, and the program gave her an unsatisfactory performance rating. She has filed a grievance disputing the termination and the rating. Is the member eligible to serve another term in another program?
Unless and until this grievance results in a rating of "satisfactory" for the member, she is not eligible to serve a term with another program.

C. 34 May a program reimburse a dismissed member for living allowance and time missed if the member's dismissal is not upheld as a result of the grievance process?
Yes, if this is in the context of a resolved grievance. The costs associated with settling a grievance may be allowable if reasonably necessary for the program to carry out the

purposes of the grant. Things like missed hours and living allowance due under a resolved grievance are generally considered "reasonably necessary" because living allowances are already approved, allowable costs.

C. 35. Can members perform service that involves renovating facilities housed entirely within a building used for religious purposes if those facilities are used for non-religious functions as well (e.g. shelters, soup kitchens, etc.)?
The key issue here is whether there is a realistic risk that an objective observer would conclude, based on all the facts, that the federal government, through its support of AmeriCorps members, is endorsing religion. While AmeriCorps members may not construct, renovate, maintain, or operate any facility primarily or inherently devoted to religious instruction or worship, it may–depending on the specific facts–be permissible for them to renovate facilities used solely for non-religious purposes and available to anyone in the community, even if the facilities are physically housed within a building used for religious purposes. However, because each situation turns on its specific facts, any programs facing this type of question should consult their program officer to obtain guidance.

C. 36. May an AmeriCorps program hold prayer sessions after its AmeriCorps meetings if the members all agree to it?
Members may not earn service hours while engaged in a prayer session. If the program does hold prayer sessions, they must be very clearly optional, held at a different time and/or location from AmeriCorps service activities, and planned in a way so that those who do not wish to participate do not feel compelled to do so. The grantee or program must be able to articulate how they comply with Corporation regulations on prohibited activities related to religious activities.

C. 37. If a member is serving at a location where employees go on strike, may the member cross the picket line and continue to serve there?
The AmeriCorps regulations at 45 CFR § 2520.65 prohibit a member from organizing or engaging in strikes; assisting, promoting or deterring union organizing; or impairing existing collective bargaining agreements. They do not address the issue of whether a member may cross the picket line during a strike. The program must make the decision, on the basis of all the facts, while ensuring (1) that the member is not engaging in any prohibited activities, and (2) the member's safety. If the program decides against having the member continue his or her planned service activities, the program should work with Corporation program and grants staff to amend its program objectives and performance measures, as necessary.

C. 38. May an AmeriCorps member perform paid work for the grantee or at the member's service site outside of the member's service assignment?
The Corporation has a long-standing practice of advising against an AmeriCorps participant being simultaneously employed by the organization with which the participant is serving. AmeriCorps members are, by definition, not employees of the organizations with which they serve. To allow a member, even in the member's free time, to perform paid work begins to chip away at the wall between "employment" and "service." The

program would be presented with a challenge in distinguishing between time that the individual is a participant, and time that the individual is an employee. This is particularly problematic if the program is operated by a faith-based organization where there may be issues related to prohibited activities.

Although it may be possible to structure a relationship in which an individual, during non-AmeriCorps service hours, performs paid work for the same organization, in which the individual's duties as a participant are entirely distinct from the individual's duties as an employee, the Corporation's general stance is that the risk for confusion is insurmountable.

C. 39. May an AmeriCorps member receive service hour credit for time spent studying for the GED?
Members may earn service hours for time spent studying for their GED as part of their education and training hours if this is a component of the program design.

C. 40. How should members account for travel time to statewide events or training events?
Programs must exercise their judgment when allowing time spent traveling as service hours. In most instances, time spent traveling to training or special events is not direct service and cannot be counted as such. Ordinary commuting time is not allowable as a general rule. However, when training or special events require out-of-town or other exceptional travel beyond ordinary commuting, it is reasonable for each program to determine what amount of travel time can be charged to non-direct service hour activities or training. To the degree that out-of-town activities are planned in advance, the program should lay out its expectations in the member agreement.

C. 41. Can travel time between service sites be counted as service time?
Yes. Member travel time between service sites during a service day is counted as service time; the initial trip to a service site that day, and the time going home from the last site, are considered commuting time and are not counted as service hours.

C. 42. Can a program have its members sign an agreement with the program that the member will reimburse the program for costs of attending a conference if the member chooses not to attend without a good reason?
Programs should establish disciplinary policies that can be implemented in an objective, consistent, fair, and equitable way that will result in the desired outcome (i.e., improved behavior and performance by members). In this case, the criteria as to what constitutes a "good reason" would have to be well defined and supportable.

C. 43. What potential liability issues need to be taken into consideration for members who plan to travel out of state for disaster relief activities during their term of service?
If the program has worker's compensation, the program would need to ensure coverage would extend to accidents that occur out of state. If the program does not have worker's compensation, they need to be sure the accidental death and dismemberment insurance

policy will cover any accidents that occur out of state. The program should also ensure that its liability coverage extends to the out-of-state activities.

C. 44. If a member is suspended, is the program required to reinstate the member once the suspension is over?
No. A member may be reinstated in the program in which he or she was serving, but this is not mandatory.

C. 45. Under what conditions can a program release a member for compelling personal circumstances?
To be released for compelling personal circumstances a member must have performed satisfactorily, completed at least 15% of his or her term, and the program must document that the member who was unable to complete their term of service due to circumstances beyond their control.

C. 46. Who determines whether a personal circumstance is sufficiently compelling to warrant release with partial award?
The grantee is responsible for determining and documenting compelling personal circumstances. The Corporation and its auditors may review these circumstances as part of their oversight and monitoring responsibilities.

C. 47. Can pregnancy or childbirth be considered a compelling personal circumstance for which the member can be released from service with a pro-rated education award?
Pregnancy and/or childbirth could be determined by the grantee to be compelling personal circumstances if they prevent the member from completing a term of service. The member might also qualify under the Family Medical Leave Act, if the member is covered, or the program could suspend the member so that the member can return some time in the future (within 2 years) to complete the term of service.

C. 48. May a program stipulate in its member agreement that a member may be released for cause if she becomes pregnant?
No. This would be an instance of discrimination on the basis of gender in violation of the Corporation's anti-discrimination policy
(See www.americorps.org/for_organizations/funding/eo_requirements.asp). It may also be a violation of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq:). A pregnant person would be entitled to the same treatment as someone with a medical condition that might require time away from the term of service.

C. 49. Under what circumstances may a program determine that a compelling personal circumstance exists when a member leaves service to start a job?
In general, a job is not considered a compelling personal circumstance. If a member decides to leave to take a job, the member would be exited for cause and would not be eligible for the education award.

The regulations and provisions contain a narrow exception to this general rule. Compelling personal circumstances may include leaving a program to obtain employment

IF the member is moving from welfare to work, or is enrolled in a program "that includes in its approved objectives the promotion of employment among its members." If a member is a welfare recipient and is able to obtain a job that will get him or her off welfare, the program may deem his or her early departure from a program as a compelling personal circumstance.

Similarly, if a program has an approved objective of promoting employment among its members, the program could consider a member's early departure from the program to take a job as a compelling personal circumstance. Without such an approved objective, a member leaving to take a job must be released for cause. In all cases, it is the program's responsibility to make the determination and to document the decision.

C. 50. How should we handle time off for members serving in the Armed Forces Reserves?
Generally, the Reserves of the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, the Army National Guard, and the Air National Guard require reservists to serve one weekend a month plus 12 to 15 days a year (hereafter referred to as the two-week active duty service). To the extent possible, grantees should seek to minimize the disruption in members' AmeriCorps service as a result of discharging responsibilities related to their reservist duties. If members have a choice of when to fulfill their annual two-week active duty requirement, they should do so when it will not disrupt their AmeriCorps service. In instances where the dates of active duty are inflexible and conflict with AmeriCorps service, members should be granted a leave of absence for the two-week period of active duty service in the Reserves.

Members may not receive time-off for additional Reserves-related service beyond the two-week active duty service. No AmeriCorps service credit is earned for the once-a-month weekend service in the Reserves. Grantees should credit members for AmeriCorps service hours during their two weeks of active duty service in the Reserves if it occurs during their AmeriCorps service. The member would receive credit for the number of hours he or she would have served during that period had there been no interruption. For example, if a full-time member is signed up to serve 30 hours of AmeriCorps service one week and 40 hours of AmeriCorps service on the following week, she or he would receive 70 hours of AmeriCorps service credit for the two weeks of active duty service regardless of the actual number of hours served in the Reserves.

Reservists in the U.S. Armed Forces receive compensation for their mandatory two weeks of active duty service. The compensation regulations governing the Army and Air National Guard may vary by state.

Grantees should continue to pay the living allowance and provide health care and child care coverage for the two-week period of active duty.

C. 51. If a member leaves a program before serving at least 15% of the required service hours, is this member included in determining the program's retention rate? May the program use Corporation grant funds to support such a member?

Yes, to both questions. The member is included in determining the program's retention rate, and the program may use Corporation grant funds to cover the costs of the member even though he or she left prior to serving 15% of the required service hours.

C. 52. May an individual who served less than 15% of a first term and completed a second term serve a third term in an AmeriCorps State and National program?
Yes. Serving less than 15% of a term, unless the member leaves due to misconduct, is not counted in ascertaining the number of terms of service.

C. 53. May a less-than-full-time member serve a concurrent term in a different program during the same program year?
Yes, a less-than-full-time member may serve a concurrent term in a different program during the same program year.

C. 54. May a less-than-full-time member serve a consecutive term in a same or different program during the same program year?
Yes, a less-than-full-time member may serve a consecutive term in the same or a different program during the same program year. If you are considering allowing this, please contact your program officer.

C. 55. When and how can a member transfer between programs?
A state commission or National parent organization may grant permission to transfer a member to another AmeriCorps State and National program for compelling personal circumstances. The following procedures are required:
1. Program A must first determine that compelling personal circumstances warrant a transfer.
2. Prior to initiating a transfer, Program A must provide written confirmation to Program B that valid compelling circumstances support the transfer to Program B.
3. The member must apply to and be accepted by Program B, which must have an available slot in the incoming class (this means the program is able to provide an entire term of member support costs and an education award).
4. The member must be able to finish their term of service within twelve months of their original start date.
5. Program B must approve the transfer in writing.
6. No funds can be transferred from Program A to Program B.
7. If Program A has already conducted the mid-term evaluation, they will provide it to Program B. If Program A has not yet conducted the mid-term evaluation, Program B will conduct the mid-term evaluation with consultation with Program A.
7. The transferred member cannot be counted twice for purposes of enrollment and/or retention.
8. The slot that remains with Program A will revert to new, unfilled status regardless of the length of time the member served.

Generally, members may not transfer across different streams of service. For example, a member may not transfer from an AmeriCorps State and National program to an AmeriCorps VISTA position or to AmeriCorps NCCC.

Programs with multiple sites may transfer members to other sites for program management purposes without following the procedures listed above.

C. 56. : What are the allowable responsibilities of team leaders in AmeriCorps State and National programs?
The National and Community Service Act, as amended, provides for approved national service positions to include a "position involving service as a crew leader in a youth corps program or a similar position supporting a national service program that receives an approved national service position" 42 U.S.C § 12573(6). This language allows programs, in addition to youth corps, to use AmeriCorps members to provide an additional layer of leadership and support for members under certain conditions.
The following is guidance on the use of AmeriCorps members as Team Leaders.

In general, all prohibited activities listed in Section 5 of the AmeriCorps Provisions apply to Team Leaders just as they do to all AmeriCorps members. Team Leaders are not permitted to act in a staff capacity. Supervising members is a staff responsibility. Team Leaders must not be responsible for program development and coordination; however, they may assist by providing information and resources on best practices or by helping to develop portions of the program such as the training curriculum. In essence, under no circumstances should an AmeriCorps member serving as a Team Leader be the individual legally responsible for the program or other members.
The Team Leader position description should emphasize activities that involve them in performing direct service or providing support to members engaged in direct service.

Examples of Team Leader activities: working alongside members performing direct service to serve as a model and to provide on the spot assistance; training members; providing guidance and support to members, including reflection exercises, conflict resolution, advice for transitioning out of AmeriCorps, etc.; arranging member development activities; building a sense of esprit de corps and general team cohesion among members; leading monthly/weekly meeting of members; leading and facilitating team service projects; working with the community to develop partnerships, including community volunteers, that will support the members' projects; and communicating with program staff, site supervisors, and other members to ensure the execution of a quality program that is consistent with the AmeriCorps provisions.

Examples of *unallowable* Team Leader activities: signing member timesheets; evaluating member performance; disciplining AmeriCorps members; enrolling/dismissing AmeriCorps members; writing and/or signing program reports; managing the program's payroll and budget.

While Team Leaders are not to serve as the program's administrative staff, they may be engaged, on a limited basis, in activities that support the administration of the AmeriCorps program. These include: raising funds or in-kind contributions in direct support of specific AmeriCorps projects, such as team service projects.

C. 57. What is the impact on the living allowance for residential programs, or programs that provide housing?
Residential programs, or programs that otherwise provide housing, should ensure that the living allowance that they are providing, in addition to the value of the housing, does not equal more than the maximum living allowance.

C. 58. What is the guidance regarding members serving on-call hours?
The Corporation is not issuing formal policy on serving on-call hours, and suggests that grantees and state commissions check to see if their state has policy in this respect. If your state does not have a policy, the Corporation suggests that you establish your own policy. Common policy practice includes a provision that a member can count service hours only hours served on call on-site. On-call hours during overnight hours are often not allowable.

C. 59. Are AmeriCorps members covered under the Volunteer Protection Act of 1997?
The federal Volunteer Protection Act of 1997 generally protects volunteers from civil liability. However, the definition of volunteer excludes anyone who receives compensation (other than reimbursement for expenses) or anything of value in lieu of compensation in excess of $500 per year. AmeriCorps members who receive a living allowance or education award are not protected under the law.

C. 60. A grantee has a member who is a retired civil servant receiving a federal civil service pension. Does the grantee or CNCS need a waiver for her to participate as an AmeriCorps member as the U.S. Office of Personnel Management requires for those who participate as AmeriCorps VISTAs?
If a retiree from federal civil service returns to work for the federal government, his or her retirement benefits and/or new salary may be affected. However, AmeriCorps State and National members are not employees of the federal government or of the program for which they serve. The AmeriCorps State and National living allowance is not need-based and is not impacted by any other income a person may receive from other sources. There is no apparent conflict of interest in a retiree from federal civil service serving with AmeriCorps State and National.

C. 61. What are the program responsibilities and requirements in administering child care?
1. Informing the AmeriCorps Childcare Provider. In addition to determining a member's eligibility at the start of the term of service, Program directors are required to notify the AmeriCorps Childcare Provider immediately in writing when:
A member is no longer eligible for child care benefits due to a change in the member's eligibility status (e.g., family income exceeds the limit, the child turns 13, a full-time member becomes a less than full-time member, or a member leaves);
New or existing members become eligible for child care benefits;
A member wishes to change child care providers or a child care provider will no longer provide child care services; or
A member is absent for excessive periods of time (five or more days in a month).

Costs incurred due to the grantee's failure to keep the AmeriCorps child care provider immediately informed of changes in a member's status may be charged to the grantee's organization.

2. Less-than-Full-time Members. Although no portion of child care expenses for less-than-full-time members may be paid from Corporation funds, Programs may choose to provide child care to half-time members from other sources.

3. Payments. Payments or reimbursement for child care benefits will be made for eligible members to qualified providers from the date child care need was established after service began. The amount of child care allowance may not exceed the applicable payment rate established by the State where the member is serving for child care funded under the Child Care and Development Block Grant Act of 1990. No payments and reimbursements will be made in the event the AmeriCorps member was ineligible, or if the provider was not qualified under the state guidelines.

4. Less Than Full-Time Members Serving in a Full-Time Capacity. Less than full-time members who are serving in a full-time capacity for a sustained period of time (such as a full-time summer project) may be eligible for child care and health care benefits supported with Corporation funds.

C. 62. If the AmeriCorps child care provider does not cover all of a member's child care expenses, is it allowable for the program to use other CNCS grant funds to cover the remaining unpaid balance? Can they use grantee funds for this expense and report this as match?
Yes. They can use CNCS funds or grantee funds and count them as match as long as it does not exceed the allowance rate as set forth in 45 CFR §2522.250 (a)(3).

C. 63. Is an AmeriCorps member eligible for state unemployment insurance if he or she is released from service?
An AmeriCorps member's eligibility for state unemployment insurance is a matter of state law that is determined on a state-by-state basis. AmeriCorps grantees should consult their own state unemployment agency to determine the eligibility of members in their state for unemployment insurance. Payment into unemployment systems is not an allowable cost unless required by state law.

C. 64. If an AmeriCorps member loses a job outside of service in AmeriCorps, is the individual eligible to receive unemployment compensation for the loss of that position or would continued service in AmeriCorps preclude the person from being considered unemployed?
This is a state law question and the answer will differ from state to state. Some states view AmeriCorps service as employment in the unemployment compensation context, and others do not. Each state has to interpret its laws and determine whether it views AmeriCorps service as employment or not. If the state has not previously taken a position on this issue, the state commission can try to persuade them one way or the other, but the state unemployment agency will make the final call.

C. 65. The AmeriCorps grant provisions state that members may not receive health insurance paid for with AmeriCorps funds if they already have another type of health insurance. Does this apply to members who have Medicaid or Medicare coverage?
Full-time members are entitled to health insurance coverage even if they are on Medicaid or Medicare. Medicaid and Medicare coverage are considered wrap around coverage, which means that they will pick up any costs that the health insurance policy provided by the member's AmeriCorps program does not cover.

C. 66. Are AmeriCorps members entitled to continued health coverage under COBRA at the conclusion of their service in AmeriCorps?
The federal right to have continued access to employer-provided group health coverage is commonly called COBRA continuation coverage, for the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) in which it first appeared. The requirements under the National and Community Service Act regarding health insurance apply to members only during their term of service. Therefore, the Corporation is not in a position to advise grantees or members on legal requirements outside the scope of our grant requirements. We are not aware of any definitive ruling by the Department of Labor or otherwise on whether, or under what circumstances, COBRA requirements apply to AmeriCorps members. Our understanding is that some health policies have provided members with COBRA coverage, while others have not.
Reference: 42 U.S.C. § 12594

C. 67. May an AmeriCorps member who serves on a jury accept jury duty pay? If yes, may the host organization require the member to provide the jury duty pay to the organization if it has such a policy for its employees?
The Corporation's statute and regulations are silent on this issue; therefore there is nothing that would prohibit a member from receiving jury duty pay. If the program's policy of collecting jury duty fees is permitted under state law, the program may collect it from the member. The grantee should make sure that the program's practice is legal under state law.

C. 68. Can a member be authorized for temporary leave for the reasons allowed under the Family Medical Leave Act (FMLA) if he or she does not otherwise meet the eligibility requirements for FMLA?
At the grantee's discretion, temporary leave may also be authorized for the reasons allowed under FMLA to AmeriCorps members who do not otherwise meet the eligibility requirements for FMLA leave as described in the regulations. If temporary leave is appropriate, grantees have the flexibility to determine the duration of the absence for up to 12 weeks, and may choose to continue providing health benefits to the member during the period of absence. The member must be suspended during the period of temporary leave.

The length of the leave must be based on two considerations: (1) the circumstances of the situation; and (2) the impact of the absence on the member's service experience and on the overall program. If the disruption would seriously compromise the member's service

experience or the quality of the program as a whole, then the grantee may offer the member the option of rejoining the program in the next class or completely withdrawing from the program.

C. 69. What are the rules on AmeriCorps member eligibility for food stamps?
The AmeriCorps State and National program is authorized by the National and Community Service Act of 1990 (NCSA), 42 U.S.C. § 12501 et seq. The NCSA states allowances, earnings, and payments to participants in AmeriCorps programs "shall not be considered income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any federal or federally-assisted program based on need, other than as provided in the Social Security Act." 42 U.S.C. § 12637(d). Based on the language, the USDA issued an opinion in 2001, which stated AmeriCorps State and National benefits are excluded from income for food stamp purposes.

C. 70. Are EAP members eligible to receive child care through the Corporation provider?
No, EAP members are not eligible for AmeriCorps child care benefits. EAPs are not required to provide child care benefits, thus CNCS is not required to pay for such benefits. If the EAP chooses to provide child care, it must do so through its own budget and if the program cannot, the program may compile a list of possible community resources that provide child care on a reduced or zero cost basis.

C. 71. Are Professional Corps programs required to provide health care coverage for participants?
No. While the national service legislation generally requires AmeriCorps programs to provide health care coverage for eligible full-time participants, the specific statutory authority for Professional Corps programs exempts them from health care coverage requirements. Professional Corps programs are defined by a specific statutory provision as providing 100% of the participants' salaries and benefits (other than education awards). 42 U.S.C. § 12572(a)(8).

Professional Corps programs, under this statutory definition, may neither seek reimbursements nor elect to offer an alternative policy of a specific market value. This recognizes the fact that Professional Corps programs, by design, enroll employees whose benefits (other than the education award) are outside the scope of Corporation assistance and are not subject to the statutory provisions governing living allowances and health care. For this reason, Professional Corps programs may offer AmeriCorps members a benefits package without regard to the statutory requirements applicable to other AmeriCorps programs.

C. 72. Where can I find out about creating reasonable accommodations for people with disabilities? When does an accommodation become not reasonable?
The vast majority of accommodations are inexpensive. For those cases where reasonable accommodations are more costly, there is a limited amount of money available through state commissions to provide accommodations for service members. The Office of Disability Employment Policy operates a toll-free, confidential, free resource for employers on reasonable accommodation requirements and options for accommodating

employees at (800) 526-7234 (voice/TTY), e-mail at JAN@jan.icdi.wvu.edu, or website at www.jan.wvu.edu.

Accommodations that impose an undue financial or administrative burden on the operation of the program or fundamentally alter its nature are not reasonable accommodations. However, the grantee must document and prove any undue burden. Similarly, a person who poses a direct threat to the health or safety to himself or herself or to others, where the threat cannot be eliminated by reasonable accommodation, is not a qualified individual with a disability. In such instances the grantee must document and prove the direct threat.

In a few cases, you may receive requests for accommodations that you believe are unduly disruptive to your program or are too expensive. Under the Rehabilitation Act and the terms of your grant or agreement with the Corporation, you must provide accommodation, upon request by a qualified individual with disabilities, unless doing so is an undue financial or administrative burden to your program. This is a very high standard. Not being easily achievable does not meet this standard. Being difficult to achieve, time-consuming, or costly, do not meet this standard.

In addition, there are many factors that go into evaluating the obligation to provide accommodations. Undue administrative burden means the accommodation will alter the fundamental nature of your program. For example, adjustment of hours is often a form of reasonable accommodation. However, you must carefully consider the circumstances and the legal requirements when adjusting hours for participants. AmeriCorps State and National programs have statutory requirements regarding service hours, and changes to hours that violate these requirements alter the fundamental nature of the program. Therefore, these changes are not required for reasonable accommodation and providing them may violate the Corporation's statute.

You must determine if your program has consistently applied these requirements to all your participants. Strict adherence to the legal requirements to deny a person an accommodation for his or her disability when flexibility is allowed for others is discrimination because of disability.

How does a member file a disability discrimination claim?
Every grantee of the Corporation is required to have a grievance procedure for resolving disputes by participants. Except for AmeriCorps VISTA, your grievance procedure may include or exclude discrimination claims (failure to provide reasonable accommodation is a discrimination claim, and AmeriCorps VISTA excludes all discrimination claims from its grievance process).

Regardless of your decision in this regard, any participant may file a discrimination claim with the Corporation's Office of Civil Rights and Inclusiveness. That Office can be reached at (202) 606-7503, (202) 606-3472 (TTY), (202) 606-3465 (FAX), or eo@cns.gov. If you choose for all discrimination claims to be filed under your grievance

procedure, it is recommended that you call upon the expertise of colleagues in the disability community to assist you in evaluating grievances.

C. 73. What are my obligations to comply with federal law and Corporation policy on non-discrimination?
Obligation to Cooperate. The grantee must cooperate with the Corporation so that the Corporation can ensure compliance with the civil rights statutes and implementing regulations. The grantee shall permit access by the Corporation during normal business hours to its books, records, accounts, staff, members, facilities, and other sources of information as may be needed to determine compliance.

Discrimination Complaints, Investigations and Compliance Reviews. The Corporation may review the practices of the grantee to determine civil rights compliance.

Any person who believes discrimination has occurred may file a discrimination complaint with the Corporation's Equal Opportunity Office. The grantee may not intimidate, threaten, coerce, or discriminate against an individual to interfere with a right or privilege secured by the civil rights acts or because the person made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing. The Corporation will keep the identity of complainants and witnesses confidential except as necessary to conduct an investigation, hearing, or judicial proceeding.

The Corporation will investigate whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with the statutes and their implementing regulations. If an investigation indicates a failure to comply, the Corporation will so inform the grantee and any applicable subgrantees and will attempt to resolve the matter by voluntary means. If the matter cannot be resolved by voluntary means, the Corporation will initiate formal enforcement action.

Discrimination complaints may be raised through the grantee's grievance procedure. Use of the grantee's grievance procedure may not be a required precursor to filing a federal discrimination complaint with the Corporation. Use of the grantee's grievance procedure does not preclude filing a federal discrimination complaint. The grantee's grievance procedure should advise members that use of the grievance procedure does not stop the running of Corporation time frames for filing a discrimination complaint with the Corporation. In all cases where discrimination allegations have been raised with the grantee, the grantee must submit a written report to the Corporation's Equal Opportunity Office, which has review authority over the investigation and disposition of all discrimination complaints.

Self-Evaluation Requirements. The grantee must comply with (1) the self-evaluation requirements under section 504 of the Rehabilitation Act regarding accessibility for individuals with disabilities; (2) the self-evaluation requirements of the Age Discrimination Act of 1975; and (3) the self-evaluation requirements under title IX of the Education Amendments of 1972 regarding discrimination based on sex. Guidance

regarding the self-evaluation requirements may be obtained from the Corporation's Equal Employment Opportunity Office, 1201 New York Avenue, NW, Washington, D.C. 20525, (202) 606-7503; (202) 606-3472 (TTY); (202) 565-2816 (FAX); or eo@cns.gov (e-mail).

Applicable Statutes. In accordance with its assurances, the grantee must comply with all federal statutes relating to non-discrimination to the extent applicable, including, but not limited to titles VI and VIII of the Civil Rights Act of 1964 (42 U.S.C.§2000d and 3601 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C.§794), title IX of the Education Amendments of 1972 (20 U.S.C.§1681 *et seq.*) the Age Discrimination Act of 1975 (42 U.S.C.§6101 *et seq.*), the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), the Public Health Service Act of 1912 (42 U.S.C.§290dd-3 and 290ee-3), and the requirements of any other non-discrimination provision in the National and Community Service Act of 1990, (42 U.S.C.§12635), or any other applicable non-discrimination provision.

C. 74. Is the AmeriCorps living allowance considered income for determining TANF eligibility for AmeriCorps members?
Yes. The National and Community Service Act of 1990 provides that allowances, earnings, and payments to participants in AmeriCorps State and National programs "shall not be considered income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any federal or federally-assisted program based on need, other than as provided under the Social Security Act (SSA)." Temporary Assistance for Needy Families (TANF) is a block grant program provided under the SSA. Because TANF is under the SSA, the AmeriCorps State and National living allowance may be considered income for the purposes of determining eligibility for and the amount of aid under TANF.

C. 75. What are the requirements for member evaluations for EAPs?
What is the requirement for EAPs regarding member evaluations?
EAPs are required to comply with the member evaluation regulation, which is designed to ensure that members are evaluated sufficiently to determine eligibility for a subsequent of service. Here is the regulation:

45 CFR § 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve for more than one term?
(c) *Eligibility for second term.* A participant will only be eligible to serve a subsequent term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service in accordance with the requirements of paragraph (d) of this section. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.
(d) *Participant performance review.* For the purposes of determining a participant's eligibility for a second or additional term of service and/or for an AmeriCorps educational award, each AmeriCorps program will evaluate the performance of a

participant mid-term and upon completion of a participant's term of service. The end-of-term performance evaluation will assess the following:
(1) Whether the participant has completed the required number of hours described in paragraph (a) of this section;
(2) Whether the participant has satisfactorily completed assignments, tasks or projects; and
(3) Whether the participant has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.
Is there a standard format for mid-term and final member evaluations?
The minimum requirements for mid-term and final evaluation are stated in the regulation, above. Grantees may determine the format and contents of their evaluation to meet their needs and the needs of their members as long as these minimum requirements are in place.

How should programs document that member evaluations occurred?
Programs should maintain written documentation that the member received the mid-term and final evaluation as described in the regulations, i.e. whether the participant has completed the required number of hours; satisfactorily completed assignments, tasks or projects; and has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

Are programs required to conduct mid-term evaluations for members that serve less than half time?
No. Programs are not required to conduct mid-term evaluations for members that serve less than half-time.

Are programs required to determine the results of a member's evaluation from a previous term of service?
It is important to ensure that a member who served previously is eligible to serve in your program, and you should make a reasonable effort to gather that information. If the member received an education award, you may assume the member served satisfactorily in the previous term. If the member was released for cause without receiving an education award, and you do not check with the program with which the member formerly served, you run the risk of enrolling an ineligible member. In this case some or all of the costs associated with that member can be disallowed. The My AmeriCorps Portal includes evidence of member's past service.

Is this policy change retro-active? In other words, will my EAP program be audited on the basis of the regulations or the Provisions that were in effect at the time the program was in operation?
The Corporation management holds EAP programs harmless for non-compliance if they were in compliance with the Grant Provisions issued with their grant. The new requirement applies to grants awarded in 2008 and forward.

C. 76. What is the HEART Act and how does it affect AmeriCorps members?

The HEART Act contains a provision that excludes AmeriCorps benefits from being counted as income for purposes of eligibility for Supplemental Security Income (SSI). This extends the long-time AmeriCorps VISTA income disregard for SSI to all AmeriCorps positions. While the law does not extend to Social Security Disability Insurance (SSDI), it removes a significant barrier to participation for SSI recipients. Additional information and resources are posted here.

C. 77. Are members who receive their living allowance in the form of a wage paid with match funds or funds outside of the grant eligible to receive SSI HEART Act benefits?
There is nothing in the law to suggest that the manner in which AmeriCorps benefits are distributed would impact the applicability of the HEART Act's amendment directing SSI to ignore AmeriCorps benefits when determining eligibility for SSI. In other words, whether the member is receiving a living allowance in the standard form or as a wage, if it is an AmeriCorps benefit, SSA will ignore it for the purposes of determining eligibility for SSI.

C. 78. How do Supplementary Security Income (SSI) rules affect AmeriCorps members?
Supplemental Security Income (SSI) is a federal program that provides a monthly cash benefit to low-income individuals who are aged, blind, or who have a disability. Prior to the passage of the Heroes Earnings and Relief Tax Act of 2008 (HEART Act), receiving an AmeriCorps living allowance could disqualify an individual from eligibility. Under the HEART Act, the Social Security Administration will ignore an individual's receipt of AmeriCorps benefits for purposes of SSI eligibility. The Heart Act excludes "any benefit (whether cash or in-kind)" and so covers the living allowance, health insurance, child care, and the education award (and related interest payments).
Additionally, SSI recipients who serve in AmeriCorps State and National and National Civilian Community Corps automatically qualify for the Student Child Earned Income Exclusion if they meet applicable age and marital status requirements.
SSI recipients who are (1) under the age of 22 and (2) neither married nor the head of a household are eligible for the student earned income exclusion, which excludes from countable earned income $1,290 per month and up to $5,200 per year (amounts as of January 1, 2001). This exclusion may be combined with existing SSI work incentives and other income disregard rules, which should encourage more young people with disabilities to participate in AmeriCorps State and National and NCCC.
Note that the Student Child Earned Income Exclusion policy change does not affect AmeriCorps VISTA members, whose benefits are already fully excluded from income under section 404 of the Domestic Volunteer Service Act.
Any portion of an education award used by an SSI recipient to pay for tuition, fees, and other necessary education expenses (not including room and board, or repaying student loans) will not count as income. Any portion of the education award that is not used for tuition, fees, or other necessary educational expenses counts as income in the month that it is used. For general questions about SSI or the terms used in this answer, go to http://www.ssa:gov/notices/supplemental-security-income/.
C. 79. Is service in AmeriCorps considered an allowable work activity under Temporary Assistance to Needy Families (TANF)?

Yes. In the June ’06 Federal Register Notice, AmeriCorps and VISTA are explicitly listed as an example of community service meeting the definition of an allowable work activity.

C. 80. *Do AmeriCorps benefits count as income in determining eligibility for other federal government benefits?*
The answer depends upon the federal benefits program in question. The National and Community Service Act of 1990 (NCSA) provides that allowances, earnings, and payments to participants in AmeriCorps programs “shall not be considered income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any federal or federally assisted program based on need, other than as provided under the Social Security Act.”

The Heroes Earning Assistance and Relief Tax Act of 2008 provided that AmeriCorps benefits, including the living allowance, health insurance, child care, and the education award (and related interest payments) are excluded from countable income for determining eligibility for Supplemental Security Income (SSI).

Therefore, if the benefits program is federally-funded and is based on need, and is not provided under the Social Security Act (other than SSI), AmeriCorps State and National benefits should not affect an AmeriCorps member’s eligibility for such assistance. Examples include Food Stamps, Pell Grants, HUD housing programs, and VA benefits.

If, on the other hand, the benefits program is not federally-funded, not need- based, or is provided under the Social Security Act (other than SSI); the member’s eligibility for those benefits might be affected. The member should contact the relevant state or federal agency responsible for the program in question, or the state commission, to get a determination. Examples of benefits that might be affected by AmeriCorps benefits are Temporary Aid for Needy Families (TANF), Medicaid, Medicare, and SSDI.
Refer to the Corporation’s website
at http://www.americorps.gov/for_organizations/funding/gc_guidance.asp for additional information.
Reference: 42 U.S.C. § 12637(d)

C. 81. Are programs required to provide health care insurance for members on Medicaid?
You must provide health care coverage to all full-time AmeriCorps members even if they are eligible for Medicaid. The U.S. Department of Health and Human Services (HHS) has taken the position that members receiving Medicaid have coverage available to them through AmeriCorps. Because Medicaid “wraps around” other available health care coverage, Medicaid will pick up only those costs that are not covered under the AmeriCorps policy. Members who remain on TANF will continue to receive Medicaid for their dependents. Members who lose TANF due to the living allowance usually can continue to receive extended Medicaid coverage for their dependents for up to one year. Applicants receiving these benefits should consult with their caseworkers before enrolling in AmeriCorps.

C. 82. Are programs required to provide Accidental Death and Dismemberment Insurance?
Programs are responsible for ascertaining whether state law requires the provision of Workers' Compensation for members. In states where Workers' Compensation is not required, you must obtain Accidental Death and Dismemberment (ADD) insurance to cover any member who is injured or killed in a service-related accident. The Corporation does not endorse any particular provider of ADD insurance.

There is no minimum requirement for ADD insurance; however, programs should be sure that the ADD insurance is sufficient to cover in-service injuries or accidents. If a member is injured on the job, that member could hold the program responsible. There have been situations where the program didn't have the required ADD insurance and faced medical bills for an injured member. While ADD insurance is an allowable cost, medical and legal bills resulting from not having ADD insurance aren't.

C. 83. Are programs required to provide post-service job referrals to members?
Programs are not required to provide job referrals for members as they near the end of their service. Programs are expected to work with their members throughout the year and especially toward the end of the term of service on advancing members' career and educational goals. Activities can range from offering assistance with resume writing and preparation of college applications, to working with local employers to arrange job interviews or job placements.

C. 84. May I release members' names and/or photographs to the press?
Program directors must have the written consent of members before disclosing their names or photographs to the press or releasing personal information about them.

C_85_Does the sunsetting of Welfare to Work change the rule on compelling personal circumstances?
45 CFR 2522.230(a)(5)(ii) states that "[c]ompelling personal circumstances do not include leaving a program…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."
Does the fact that the federal Welfare to Work program sunsetted in 2004 change this rule?No. When this section was first written in 1999, the federal Welfare to Work program was still in effect. However, the section does not specifically reference the federal Welfare to Work program. Rather, "acceptance by a participant of an opportunity to make the transition from welfare to work" is a compelling personal circumstance recognized by the Corporation for policy reasons. 45 CFR 2522.230(a)(4)(ii)(B). AmeriCorps can serve as a pathway to long-term employment, and the Corporation encourages individuals who have been receiving public support to take opportunities to become economically independent. The Corporation would not want such an individual to relinquish that opportunity out of fear of a negative performance evaluation or loss of a pro-rated education award. For an individual to be released for compelling personal circumstances for this reason, the program would need

to determine that the individual was receiving welfare, and had obtained employment as part of an effort to become self-sufficient.

C_86 Under what circumstances may state commissions or parent organizations approve conversion of a filled slot?State Commissions and parent organizations may approve occasional changes of currently enrolled members to lesser-term slots. Impact on program quality should be factored into approval of requests. The Corporation will not cover health care or childcare costs for less than full-time members.
It is not allowed to transfer currently enrolled members to a lesser-term status simply to provide a pro-rated education award if the member would otherwise be released for cause. It is also not allowed to convert a slot to a lesser-term slot at the end of a member's term of service in order to award a pro-rated education award when the member has not completed the hours required by their original term.
Changing less than full-time members to a greater slot type is discouraged because it is very difficult to manage, unless done very early in the member's term of service. State commissions and parent organizations may authorize or approve such changes so long as their current budget can accommodate such changes. Keep in mind that a member's minimum 1700 hours must be completed within 12 months of the member's original start date.
C_87 How many previously-served terms need to be checked for satisfactory service?
An AmeriCorps member can now serve up to four terms. How many previously-served terms need to be checked to see if the member served satisfactorily before enrolling him or her in a new term of service?
Programs only need to check the most recently completed term of service for satisfactory completion. It is reasonable to assume that the program that enrolled the member prior to the previous term also exercised due diligence and did not allow the member to serve if he/she had not completed the previous term satisfactorily.

D. Program Management
D. 1. What is the policy regarding the purchase of member service gear?
Grantees are encouraged to provide the basic AmeriCorps service gear package for each member (t-shirt, sweatshirt, hat, lapel pin). The grantee should direct members to wear their service gear at officially designated AmeriCorps events and may allow members to wear their service gear at other times consistent with Corporation guidelines. All member service gear purchased with federal funds is required to include the AmeriCorps logo.

D. 2. Can a member in an AmeriCorps State program serve in another state?
This is an issue for the states to decide. The commission funding the out-of-state project needs to make sure that the commission of the state in which the service will be performed agrees to or is at least aware of the funding of that project by the other state. The funding state also needs be aware of the liability insurance issues that can arise when service is performed out of state, such as disaster relief activities. Few states have funded long-term projects in other states because of an unwillingness to spend state funds on out-of-state activities. However, states are allowed to set this policy for themselves.

D. 3. Generally an AmeriCorps member is not considered an employee of the program in which he or she serves. Does this rule apply to Professional Corps members?
While the general rule is that AmeriCorps members are not employees of the program in which they serve, Professional Corps members may, in many circumstances, actually be employees of the organization where they are placed. The National and Community Service Act authorizes Professional Corps to place qualified professionals in professional positions "in communities with an inadequate number of such professionals." The statute specifically authorizes "a salary in excess of the maximum living allowance," and the legislative history clearly anticipated that members would be "placed as professionals … in a community that can not attract enough of these professionals." For example, AmeriCorps members may be placed as professional teachers in underserved schools. They receive a salary from the school at which they are teaching, and are on the staff of the school.
Reference: 42 U.S.C. 12572(a)(8); House Report no. 103-70.

D. 4. How do I change slot types and transfer slots?
Revised AmeriCorps State and National Approvals for Slot Conversion, Slot
Release 3 of the My AmeriCorps Portal makes concrete several policy changes designed to devolve authority and responsibility to grantees and afford state commissions additional flexibility in managing their portfolios.
As of the October 7, 2011, Program Officers will no longer be required to provide prior approval for unfilled slot conversions and slot transfers, and for member changes of term of service that take place over 90 days from the first day the member serves.

State Commissions and parent organizations may approve occasional changes of currently enrolled members to lesser-term slots. Impact on progam quality should be factored into the approval of requests. The Corporation will not cover health care or child care costs for less than full-time members unless they are serving in a full-time capacity and the program chooses to provide health care or child care assistance.

Slots are not allowed to be transferred across grant type or grant year. Slots eligible for refill are not allowed to be transferred.

State Commissions and parent organizations are not allowed to approve a member change in service to a lesser-term slot if the member would otherwise be released for cause. State Commissions and parent organizations may not approve a change to a lesser-term slot at the end of a member's term of service in order to award a pro-rated education award when the member has not completed the hours required by their original term.

Changing less than full-time members to a greater slot type is discouraged. State commissions and parent organizations may approve such a change as long as their current budget can accommodate the change.

State commissions are allowed to transfer slots **among** their state formula and competitive subgrantees without prior approval. They will not be allowed to transfer slots

between competitive and formula grantees or vice versa. Commissions may not transfer funds among their competitive subgrantees.
Programs will continue to be allowed to convert a full-time position to up to three quarter-time positions. All conversions will be Trust neutral, are subject to availability of funds in the Trust, and will comply with all assumptions on which Trust prudence and continued solvency are predicated. **The total number of MSYs and education award amounts in the grant may not increase as a result of the slot conversion.**
For example:
1 full-time member position (1 MSY) **may** be converted into 2 half-time slots (2 x .5 members = 1 MSY).
1 full-time member position **may not** be converted into 4 quarter-time positions as the education awards would total more than the original (4 X .2646); in this example, the maximum number of allowable quarter-time positions would be 3.

Here is a chart of MSY values:

Term of Service	**MSY**
Full-time	1.000
Half-Time	0.500
Reduced Half Time	0.3810
Quarter Time	0.2646
Minimum Time	0.2116

Grantees may also combine and convert less than full-time positions to full-time positions as long as such changes do not increase the total MSYs or total education award amounts awarded in the grant.

D. 5. How do I change filled slots?
Circumstances may arise within a program that necessitates changing the term of service of a currently enrolled member. Note that once a member is exited with a partial education award, the remaining portion of that education award is not available for use.

Full-time. State Commissions and Parent Organizations may authorize or approve occasional changes of currently enrolled full-time members to less than full-time members. Impact on program quality should be factored into approval of requests. The Corporation will not cover health care or childcare costs for less than full-time members. It is not allowable to transfer currently enrolled full-time members to a less than full-time status simply to provide a less than full-time education award.

Less than Full-time. Changing less than full-time members to full-time is discouraged because it is very difficult to manage, unless done very early in the member's term of service. State Commissions and Parent Organizations may authorize or approve such changes so long as their current budget can accommodate such changes. Keep in mind that a member's minimum 1700 hours must be completed within 12 months of the member's original start date.

Notice to Childcare and Health Care Providers. The grantee must notify the Corporation's designated agents immediately in writing when a member's status changes, such that it would affect eligibility for childcare or health care. Examples of changes in status are converting a full-time member to less than full-time member, terminating or releasing members from service, and suspending members for cause for lengthy or indefinite time periods. Program directors should contact the AmeriCorps child care providers on child care related changes, and their health insurance provider about health insurance related changes.

D. 6. How do I refill slots?

Eligible AmeriCorps State and National programs that have fully enrolled their awarded member slots are allowed to replace any member who terminates service before completing 30 percent of his/her term (effective May 17, 2007) provided that the member who terminates is not eligible for and does not receive a pro-rated education award. Programs may not refill the same slot more than once.

As a fail-safe mechanism to ensure that corporate resources are available in the national service trust to finance any member's education award, the Corporation will suspend refilling if either:

total AmeriCorps enrollment reaches 97 percent of awarded slots

the number of refills reaches five percent of awarded slots.

Grantees whose awards have special grant conditions under 45 CFR 2543.14 or 2541.120 are not eligible to refill positions. In order to be qualified to refill, grantees will be evaluated on the basis of the outcomes of Inspector General audits, site visits, and oversight by CNCS program and grants officers.

As of November 13, 2006, programs are allowed to convert one full-time position to up to three quarter-time positions. All conversions must be Trust neutral, i.e. not change the total education award amounts allocated to the grant, are subject to availability of funds in the Trust, and must comply with all assumptions on which Trust continued solvency are predicated.

This policy allows AmeriCorps slots to be converted in accordance with the grant award but without regard to the limitation therein on increasing the number of slots in the program. Thus, when converting a slot to one requiring fewer hours, the grantee is not limited to a one-for-one slot conversion, and may increase the number of members correspondingly. However, the total number of MSYs and education award amounts allocated to the grant may not increase as a result of the slot conversion.

Grantees may also combine and convert less than full-time positions to full-time positions as long as such changes do not increase the total MSYs or education award amounts allocated to the grant.

Any requests for changes that fall outside of the parameters set forth above must come to the Corporation for written approval with concurrence from the State Commission or Parent Organization.

D. 7. What is the policy regarding transfer of slots from one state formula program to another?

State commissions are allowed to transfer slots from one formula program to another in order to maximize enrollment and cost effectiveness.

D. 8. May a program extend the maximum time available for a full-time member to complete his or her service if the member has a disability?
The maximum periods for completion (12 months for full-time members; not more than two years for less than full-time members) are based on the statute (42 USC 12593(b)). A program may, however, determine that the member is eligible to be released for compelling personal circumstances and provide a pro-rated education award to the member when the member has reached the maximum period for completing service.

D. 9. What are the requirements for tutoring curriculum in the NCSA as amended by the Serve America Act?
Tutoring curriculum must be consistent with both state academic standards and the instruction program of the local education agency. Other tutoring requirements can be found in 45 CFR §§ 2252.900 – 2252.950.

D. 10. What are the requirements regarding evaluation for AmeriCorps grantees?
The regulations on evaluation for AmeriCorps grantees are here:
45 CFR §§ 2522.700-740.

FAQs and other resources are here: http://www.nationalserviceresources.org/star/ac-evaluation

Guidance for state commissions planning to conduct a state-wide evaluation is here: http://www.americorps.gov/for_organizations/manage/commcenter_detail.asp?tbl_pr_id=720

D. 11. Where can I find FAQs on the My AmeriCorps Portal?
You can find the FAQs issued on the My AmeriCorps Portal here: http://www.americorps.gov/for_organizations/manage/commcenter_detail.asp?tbl_pr_id=1775

D. 12. Where can I find FAQs on the single match?
FAQs on the single match, which is not described in statute or regulation, but in appropriations language each year, can be found here: http://www.americorps.gov/for_organizations/manage/commcenter_detail.asp?tbl_pr_id=964

D 13 Where can I find FAQs on performance measurement?
FAQs on performance measurement can be found here: http://www.nationalserviceresources.org/files/2011-FAQs-National-PM-Pilot-11.22.10.doc

D 14 Where can I find FAQs on the Trust Rulemaking of 2010, including information transfer of the education award and number of terms a member can serve?

Trust Rulemaking FAQs can be found
here: http://www.americorps.gov/pdf/11_1217_trust_rulemaking_faqs.pdf

D 15 Can Tribes use Indian Health Service support as match for an AmeriCorps grant?
No, Indian Heath Service support may not be used as match because IHS is provided to all people that are members of a federally recognized tribe and does not have a fair market value.

E. For State Commissions

The regulatory authority on this issue is in 2 CFR 225 Attachment B, Section 12 (b) (1) (former OMB Circular A-87, Attachment B, Section 11(i)).

F. Financial Management

F. 1. What is the Corporation policy regarding pre-award costs?

A grantee may be reimbursed for pre-award costs only if they are incurred with the written approval of the Corporation's Office of Grants Management. To request such approval, grantees send requests to their Corporation grants and program officers. The request includes a brief justification for the costs to be incurred and indicates the desired effective date. The Office of Grants Management will issue a letter authorizing or denying the pre-award costs within three business days.

The Corporation is prepared to approve, where appropriate, the following types of pre-award costs: personnel expense and benefits, travel for staff and prospective members, equipment, supplies, contractual and consultant service, training for staff and prospective members, evaluation, and other program operating costs.

Because the Strengthen AmeriCorps Program Act specifically indicates that a national service position is approved when the Corporation issues a grant award, the Corporation cannot approve member living allowances and support costs, including FICA, workers' compensation, health care, and child care, as pre-award costs. Approval of pre-award costs does not authorize a grantee or sub-grantee to have AmeriCorps members begin serving. AmeriCorps members may only begin service after a grant award has been issued and may not count any hours served prior to the award being issued as part of their term of service.

All pre-award costs are incurred at the grantee's risk. The Corporation is under no obligation to reimburse a grantee for these costs if the grantee does not receive an award or if the award is less than anticipated and inadequate to cover such costs.

F. 2. Can a salary rate charged to a grant for one individual vary according to duties?

While such a situation is highly unusual, if an individual occupies two positions, each on a part-time basis that are established at different salary levels, the individual meets the qualifications for both positions, and the time spent in each position is adequately documented and approved, then it is possible to charge two different salary levels for the same individual. This situation should be clearly explained in the budget narrative and discussed with the Corporation grants officer to ensure approval.

F. 3. Is a fiscal agent required to be bonded?
Fiscal agents are not required to be bonded, however, good financial practices include bonding in order to minimize risk and liability.

F. 4. Is the cost to attend a dinner or fundraising event sponsored by a grantee (e.g., $40 per ticket) an allowable cost?
No. Meals are considered either entertainment and are not allowable costs under the Cost Principles. All costs related to fundraising, whether for an event that includes a meal or tickets or other costs are also unallowable. The cost of meals is generally allowable in the context of travel only and if the cost is consistent with the organization's travel or per diem policy.

F. 5. May the cost of meals for a staff member only be charged to the grant as a direct cost when the staff member is on travel? For example, when staff members work late, can the cost of dinner be charged to the grant? Or can grant funds be used to purchase lunch for staff when a staff meeting goes from 9 a.m. to 3 p.m.?
Meals for staff while they are on travel is an allowable cost. Otherwise meals are not generally an allowable cost. Under OMB Cost Principles at 2 CFR 215 and 225 (formerly Circulars A-87 and A-122), the grantee cannot charge meals for staff working late or lunch for staff working through normal lunch period. One recognized exception in the Cost Principles is for staff attending a conference or training activity that includes meals during a working session/activity.

F. 6. Who determines the interest rate for excess cash advances, and how is it determined?
Grantees should not draw funds in excess of their needs and thus, should not have excess cash advances according to 2 CFR 215 (formerly OMB Circular A-110) and OMB Circular A-102. This regulation and circular establish the conditions under which grant recipients must place advanced federal funds in interest bearing accounts in accordance with the Cash Management Improvement Act (31 CFR § 205). The interest rate is the rate of the financial institution holding the account. The Grantee may retain interest amounts up to $250 per year. Interest earned in excess of $250 must be reimbursed annually based on the rates in the interest bearing accounts. Excess funds not placed in an interest bearing account could be subject to the interest rates published in the federal register semi-annually by the U.S. Department of Treasury.

F. 7. What is the guidance regarding the use of Corporation grant funds to join and support the AmeriCorps Alums?
PDAT funds are available to state commissions for enhancing and sustaining high quality AmeriCorps State and National Programs. To the extent that AmeriCorps Alums provides training and technical assistance that meets the state commission's goals and is consistent with the financial requirements of PDAT, using AmeriCorps Alums staff as training providers is an allowable expense. Likewise, to the extent that the state commission has chosen to provide scholarships for program staff and members to attend conferences that it deems appropriate, providing scholarships for program staff and members to attend the annual AmeriCorps Alums conference would also be an allowable expense. PDAT funds

may not be used to cover membership costs for members or recent alums to join the AmeriCorps Alums.

Administrative funds are available to state commissions to support their operation. In general, these funds may not be used to cover individual memberships in associations. However, the OMB cost principles generally assume individuals are employees of the organization. AmeriCorps members are not employees. Therefore, a member's individual membership in an organization can be an allowable expense if the benefits derived from that membership are consistent with the program's and the individual member's development objectives. If a state commission decides that memberships are consistent with their overall objectives, then using Administrative grant funds to pay for membership in the AmeriCorps Alums would be an allowable expense.

State commissions may choose to allow subgrantees to pay AmeriCorps Alums costs for their current members. If you choose to allow your subgrantees to include such costs in their grant budgets, you will need to ensure that membership in AmeriCorps Alums meets specific objectives under the grant. If you choose to allow the costs, instruct your subgrantees to include them in Section I, Part G-2 of the budget, Member Training. In no case may the fees paid to the AmeriCorps Alums be used to support lobbying.

F. 8. If a program budgeted for membership in an association for AmeriCorps members, at what point in the service year should we enroll the members in that association? May we wait until the end of the service year to enroll them?

When members are allowed to be enrolled depends on the member developmental activities. If the association's benefits will apply to program activities/leaning that spans beginning to end of service, then they should be enrolled as service begins. If the benefits apply to moving from service into post-service world, then enrollment could occur towards the end of service. There is no requirement that the annual membership derived from the enrollment totally fall only during the program year, however, enrolling literally at the end of service (as they exit) would have no direct program benefit and therefore would not be an allocable cost to the grant.

F. 9. How and when are we to apply for no-cost extensions to the grant period?

Unless otherwise specified, Corporation for National Service grants are issued for a three-year project period (36 months). Programs must apply for a one-time no-cost extension <u>before</u> the end of the three-year project period.

According to 45 CFR § 2543.25, the Corporation can authorize a one-time extension for up to 12 months. If a grantee determines that it will not be able to complete its project before the end of the three-year project period, the grantee must request an extension in writing with supporting reasons and the revised expiration date to the assigned program officer, with a copy sent to the grants officer. The program officer will initiate the amendment, which will go through a certification process that could take up to ten business days. For more information on this subject please see the Grant Provisions or call your program officer.

F. 10. If we have slots available, may we enroll additional members during the period of a no-cost extension?

No, you may not enroll new members during the period of a no-cost extension. The no-cost extension is available only to allow existing members to complete their service.

F. 11. How long are programs required to retain grant records?
In general, you must keep all records for a period of three years from the date you submit the final federal financial report for the three-year project period, or in the case of EAPs, the final project report. If an audit is started before the expiration of the three-year period, the records must be retained until the audit findings involving the records have been resolved and final action taken. More details are available in 45 CFR § 2541.420.

F. 12. What are the requirements for accounting for program income?
FAQs regarding program income can be found here.

F. 13. Are federal funds allowed to be used as match?
With certain caveats, grantees operating an AmeriCorps subtitle C program may use federal funds to meet its matching requirement.

First, the fact that legislation permits the use of non-Corporation federal funds as match is not, by itself, determinative. There must be independent authority for a grantee to use other federal funds in connection with a national service program. For example, if a grantee proposes to use Department of Education Title I funds as match, we refer the grantee to the Department of Education for a determination of whether such use is permissible under the Title I program.

Second, the national service legislation does not prohibit a grantee from using other federal funds in place of the Corporation's share, subject to the first caveat. For example, we would not prohibit a grantee from using other federal funds to pay the living allowance. Third, we do not permit a grantee to use the same funds as match for two federal grants. See 45 CFR § 2541.240(b)(3), 45 CFR § 2543.23(a)(2).

F. 14. May a grantee use direct community service as match?
Because the purpose of AmeriCorps is to enable and stimulate volunteer community service, the grantee may not include the value of direct community service performed by volunteers as match. However, the grantee may include the value of volunteer services contributed to the organization for organizational functions such as accounting, audit work, legal work, or training as match.

F. 15. May I use CNCS funds to match another grant from CNCS?
No. For example, you may not use a Learn and Serve America grant as match for AmeriCorps State and National funds.

F. 16. If we have a number of programs closing out on different dates, should we hold them all until the last date? Or should we submit them as they come in?
Grantees determine how to close out their subgrant programs. The Corporation closes out the direct grant to a Commission or a multi-state organization only. The grantee is required to certify that it has closed its subgrants and submits the certification to the

Corporation. You have 90 days after the end of your project period to close out your grant. The most important task for close out is to reconcile the amount you report on the Federal Financial Report with the amounts you report disbursed to the Department of Health and Human Services (HHS) and the amount you drew down from your HHS account. All three of these amounts must match.

G. Education Awards

G. 1. : 07 Prov. IV. J. What must a member do to receive an education award?
In order to receive an education award, a member must perform the minimum hours of service as required by the Corporation and successfully complete the program requirements as defined by the Program. For example, if successful completion of a full-time program requires 1,800 service hours, members in that particular program are not eligible for an education award simply upon completion of 1,700 hours. If a member is released from a Program for compelling personal circumstances, the member is eligible for a pro-rated education award based on the number of hours served, if it is at least 15% of the total required hours. Questions regarding authorized uses of the education award should be directed to the Corporation's National Service Trust Office.

G. 2. Can a program exit a member who completed all their hours, but deduct funds from the education award, because the member did not complete all the requirements clearly stated in the member agreement?
No, a program cannot reduce the education award in this manner. The education award is a benefit awarded for successfully completing a term of service. If a member did not successfully complete the requirements stated in the member agreement, the member should be exited for cause and receive no award. Partial awards are only available for members exited for compelling personal circumstances, and who have served at least 15% of their term. Reference: 42 USC 12603

G. 3. May the education award be used to pay a "Parent's Plus" student loan that a parent has taken out in order to pay the tuition of a child?
No, the education award may not be used to pay off a parent's student loan. You can find a list of qualified student loans here.

G. 4. Does the education award count as income for the purposes of calculating income tax?
The Internal Revenue Service has ruled that the AmeriCorps education award is not excludable from income as (1) a scholarship under section 117(a) of the Internal Revenue Code or (2) a qualified educational assistance program under section 127(b) of the Code.

G. 5. May a member use his/her education award to pay for school tuition incurred before the member begins his/her service?
No. A member can pay back student loans accrued before they start service but not tuition or any other kind of school expenses (books, etc.).

G. 6. What is the College Cost Reduction and Access Act of 2008

The College Cost Reduction and Access Act of 2007 (CCRAA) was signed into law in September of 2007. It may offer AmeriCorps members significant benefits. The Act has two provisions with implications for members: the Income-based Repayment Plan (IBR) and the Public Service Loan Forgiveness Program.

The IBR Plan will make it easier for AmeriCorps members to pay back student loans while serving. Members who meet IBR's debt-to-income ratio threshold specified in the CCRAA will be able to make payments as low as $0 a month while serving in AmeriCorps.

CCRRA FAQs can be found here. In addition, you may find the following web sites helpful in learning more about IBR and Public Service Loan Forgiveness: Department of Education, Equal Justice Works, National Association of Student Financial Aid Administrators, FinAid.org, EdFund.org. Federal Student Aid, IBR Info, Student Loan Borrower Assistance.