

May 7, 2004

**MEMORANDUM FOR TESS SCANNELL, SENIOR CORPS DIRECTOR
HOWARD TURNER, VISTA DIRECTOR
MICHAEL BERNING, FIELD LIAISON DIRECTOR**

FROM: Frank R. Trinity 
General Counsel

SUBJECT: Senior Companions, Foster Grandparents, Retired and Senior Volunteer
and AmeriCorps*VISTA Programs – Income Disregard Provisions

This memorandum is intended to ensure that other governmental entities properly apply federal law governing the disregard of payments to Senior Companions, Foster Grandparents, Retired and Senior Volunteers, and AmeriCorps*VISTA members when determining eligibility for assistance and benefits.

Section 404 of the Domestic Volunteer Service Act of 1973, as amended, (DVSA), states, in relevant part, as follows:

(f)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of, or eligibility for, assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is greater.

(f)(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under Title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

42 U.S.C. § 5044 (f) (1) and (2).



In a few cases, government agencies have failed to follow these statutory provisions and have themselves determined whether payments to participants are equivalent to or greater than the applicable minimum wage. Only the Corporation for National and Community Service may make this determination, and to date, payments to such participants have not been determined to exceed the federal or state minimum wage, whichever is greater.

Section 418 of the DVSA also states as follows:

Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to Title II of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, workers' compensation, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after the effective date of this Act [October 1, 1973].

42 U.S.C. § 5058

In summary, (1) a government program may not consider payments to individuals under the DVSA in determining to reduce or eliminate the individual's level of, or eligibility for, public assistance or services; (2) entitlements to assistance may not be denied because of a participant's failure or refusal to seek or accept employment or training, including those established for welfare to work programs; and (3) no payments to participants shall be considered wages or unemployment for the purposes of any tax, unemployment, workers' compensation, or for similar benefit payments.

Please share this memorandum with anyone with questions concerning this issue. In the event this memorandum does not resolve the issue, please contact the Office of General Counsel at 202-606-5000, extension 290.