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Statement for the Record for the Subcommittee on Veteran's Affairs, Housing and Urban Development, and Independent Agencies, Committee on Appropriations, U.S. Senate

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Preliminary Observations on the National Service Trust And AmeriCorps

Statement for the Record by Cornelia M. Ashby, Director, Education, Workforce and Income Security Issues, and Susan A. Poling, Associate General Counsel

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GAO-03-642T

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Highlights

Highlights of GAO-03-642T, statement for the record for the Chairman, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, U.S. Senate

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Preliminary Observations on the National Service Trust and AmeriCorps

Why GAO Did This Study

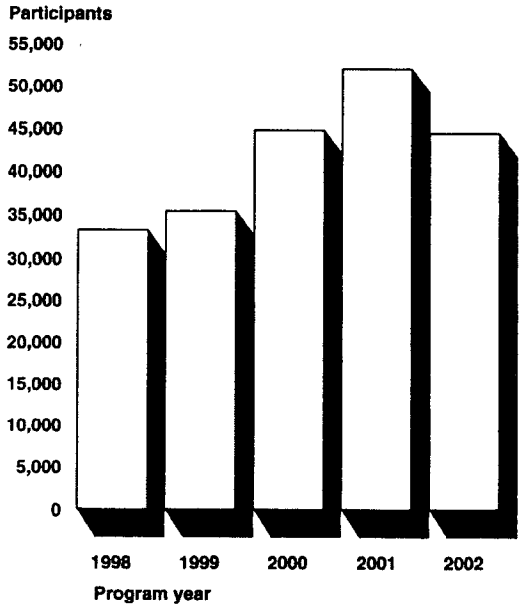
In November 2002, the Corporation for National and Community Service suspended enrollments in the AmeriCorps program due to concern that the National Service Trust may not contain enough funds to meet the education award obligations resulting from AmeriCorps enrollments. This testimony reflects GAO's preliminary review of the factors that contributed to the need to suspend enrollments and GAO's preliminary assessment of the Corporation's proposed changes

What GAO Found

As shown in the figure below, the number of participants enrolled in AmeriCorps increased by about 20,000 from program year 1998 to program year 2001. However, the number of AmeriCorps participants was not reconciled with the number of education awards that the National Service Trust could support.

GAO identified several factors that led the Corporation to suspend enrollments. The factors included inappropriate obligation practices, little or no communication among key Corporation executives, too much flexibility given to grantees regarding enrollments, and unreliable data on the number of AmeriCorps participants.

The Corporation has established new policies that may improve the overall management of the National Service Trust if the policies are fully implemented. However, the Corporation has not made policy changes to correct a key factor—how it obligates funds for education awards.



Source: 1998 through 2001 data from the National Service Trust Database. 2002 data provided by the AmeriCorps program office.

Note: Participants shown are for AmeriCorps*State and National programs only. Participants for AmeriCorps*National Civilian Community Corps and its VISTA programs are not included. Data for program years 1998 through 2001 represents actual participants. Program year 2002 data represent awarded positions. Program year varies by grantee.

www.gao.gov/cgi-bin/getrpt?GAO-03-642T.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Cornelia M. Ashby at (202) 512-8403 (ashbyc@gao.gov) or Susan A. Poling at 202-512-2667

Mr. Chairman and Members of the Subcommittee:

We are pleased to have the opportunity to comment on the preliminary findings from our ongoing study of the Corporation for National and Community Service's (the Corporation) management and oversight of the National Service Trust (the Trust). The National Service Trust is a dedicated fund within the Corporation that is to maintain sufficient funds to pay national service educational awards to participants in the Corporation's AmeriCorps program. In November 2002, AmeriCorps suspended enrollment of program participants. This statement will identify some of the factors that contributed to this suspension and related policy changes the Corporation has made since then.

These comments are primarily based on our preliminary analysis of documents and information obtained through interviews with Corporation staff. In addition, this statement reflects the April 9, 2003, opinion we provided the Committee concluding that the Corporation incurs an obligation for education benefits when it enters into a grant agreement for the approved number of new participants and therefore it must record the obligation against the budget authority available in the Trust. See appendix I for the opinion. In summary, the factors we identified, to date, that led the Corporation to suspend enrollments include inappropriate practices for obligating funds, little or no communication among key Corporation executives, and too much flexibility given to grantees—they were allowed to adjust authorized positions and were not required to provide timely information about the number of participants. While the Corporation has established new policies that may improve the overall management of AmeriCorps if the policies are fully implemented, the Corporation has not made policy changes to correct a key factor—how it obligates funds.

Background

The Corporation for National and Community Service was created to help meet community needs in education, the environment, and public safety and to expand educational opportunity by rewarding individuals who participate in national service[1]. The Corporation is part of USA Freedom Corps, a White House initiative to foster a culture of citizenship, service, and responsibility and help all Americans answer the President's call to service. The Corporation receives appropriations to fund program operations and the National Service Trust. The Corporation makes grants

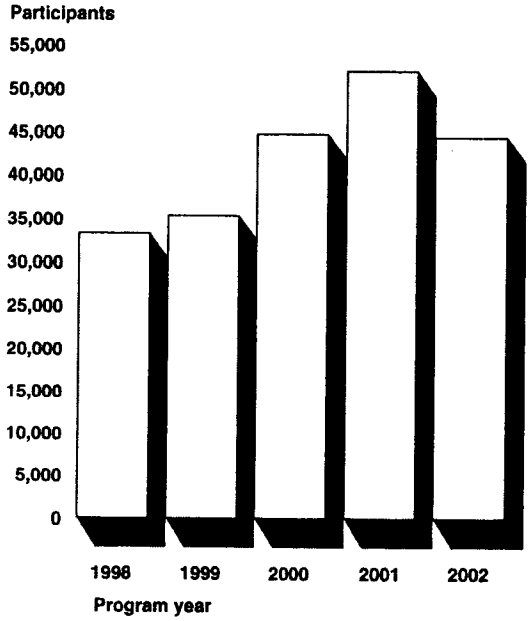
[1]The National and Community Service Act of 1990 created the Corporation.

from its program appropriations to help grant recipients carry out national service programs.

AmeriCorps is one of three national service programs the Corporation oversees.[2] Most of the grant funding from the Corporation for AmeriCorps programs goes to state service commissions, which award subgrants to nonprofit groups and agencies that enroll the AmeriCorps' participants. Participants in the AmeriCorps program can receive a stipend as well as health benefits and childcare coverage. For example, about one-half of AmeriCorps' participants received an annual living allowance of $9,300 and health benefits. Those participants who successfully complete a required term of service earn an education award that can be used to pay for undergraduate school, or graduate school, or to pay back qualified student loans. In exchange for a term of service, full-time AmeriCorps participants earned an education award of $4,725 in program year 2002. Participants have up to 7 years from the date of completion of service to use the education award. AmeriCorps also enrolls participants on a part-time basis and as "education awards only" participants. Part-time participants who serve 900 or fewer hours annually earn education awards proportional to those earned by full-time participants. Under the "education awards only" program, AmeriCorps does not pay the participant a living allowance or other benefits, but provides grant funding for administrative purposes only, about $400 per full-time participant annually. However, each participant receives an education award equivalent to that earned by a paid AmeriCorps participant. The number of AmeriCorps participants increased by nearly 20,000 from 1998 to 2001. The program year 2002 data indicate the number of positions awarded will decrease by about 8,000. (See figure 1.)

[2]The Corporation oversees the Senior Corps, AmeriCorps, and Learn and Serve America. AmeriCorps consists of three programs: AmeriCorps*State and National, AmeriCorps*VISTA, and AmeriCorps*National Civilian Community Corps.

Figure 1. AmeriCorps Participants from 1998 to 2002



Source: 1998 through 2001 data from the National Service Trust Database. 2002 data provided by the AmeriCorps program office.

Note: Participants shown are for AmeriCorps*State and National programs only. Participants for AmeriCorps*National Civilian Community Corps and its VISTA programs are not included. Data for program years 1998 through 2001 represents actual participants. Program year 2002 data represent awarded positions. Program year varies by grantee.

In November 2002, the Corporation suspended enrollments in AmeriCorps because total enrollments were potentially higher than the Corporation had expected. No new funds had been requested by and appropriated to the Trust for fiscal year 2002, and under the continuing resolution at the start of fiscal year 2003, no new funds would be deposited into the Trust until the Corporation's fiscal year 2003 appropriations were enacted. The Corporation concluded that if its grantees and subgrantees were to fully enroll new participants up to the maximum number of enrollments the Corporation had approved in its grants, the Trust would not have a sufficient amount to provide the educational awards to those participants. Enrollments in AmeriCorps were frozen from November 2002 through March 2003.

Three Factors Contributed to the Need to Suspend AmeriCorps Enrollments

Three factors contributed to the Corporation's need to suspend enrollments in AmeriCorps. Although the Corporation specified the maximum number of new participants in the grants it awarded, the Corporation did not recognize its obligation to fund participant education awards until it actually paid the benefits. Had the Corporation properly tracked and recorded its obligations in the Trust at the time of grant award when it approved new enrollments, it likely would not have needed to suspend enrollments. In addition, there was little, if any, communication among the AmeriCorps program office, the grants management office, and the Trust about the number of positions that the Trust could support. Furthermore, by allowing grantees various flexibilities and not requiring them to provide timely enrollment information, the Corporation and AmeriCorps managers could not be certain about the number of participants.

Inappropriate Obligation Practices

The Corporation did not appropriately record or track its obligations for education awards to program participants. Generally, an agency incurs an obligation for the amount of the grant award with the execution of a grant agreement. The Corporation enters into grant agreements with state service commissions in which it specifies the budget and project period of the award, the total number of positions approved, the total amount awarded for program costs for the approved positions, and the terms of acceptance. The award for the program costs is used to pay participants' stipends and health and child care coverage. The Corporation incurs an obligation for these program costs at the time of grant award.[3] While the costs of education awards for the new participants are not specified in the grants, in the grant agreements the Corporation commits to funding education awards for all of the qualified positions initially approved in a grant if the subgrantee enrolls all of the participants before the Corporation modifies the terms or conditions of the grant. In other words, upon award of the grant, the Corporation, at a minimum, has accepted "[a] legal duty ... which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States." However, the Corporation has concluded that it is not necessary to obligate funds until an individual actually enrolls in AmeriCorps. Therefore, the Corporation recorded education award obligations on an

[3]We have not examined and accordingly express no opinion on whether the Corporation is appropriately obligating program costs in the applicable appropriation account.

outlay basis. That is, obligations were recorded at the time of the quarterly drawdown of amounts for education awards from the Trust.

By failing to recognize and record its obligations at the time of grant award, the Corporation had no assurance that the number of positions approved in grant awards did not exceed the amount of educational awards the Trust could support. Proper recording of obligations serves to protect the government by ensuring that it has adequate budget authority to cover all of its commitments and prevent agencies from over-obligating its budget authority.

Lack of Communication

Corporation executives we interviewed said that there was little if any coordination between the AmeriCorps program office and officials responsible for the management of the Trust about the number of positions that the Trust could support. The AmeriCorps director said that she considered the grant budget independent from the Trust and she neither consulted with nor received direction from the Trust director when making decisions about the grants. In addition, in recent years, AmeriCorps has tried to increase the number of participants by enrolling them in the "education awards only" program. Under this program, which was an effort to lower the per participant program cost, AmeriCorps provides funding to grantees for administrative purposes only, currently about $400 per full-time participant annually. Increasing the number of participants in this way is at a low cost to the AmeriCorps program appropriation, but at full cost to the Trust, which funds the education awards, because each participant receives an education award equivalent to that earned by a paid AmeriCorps participant. Consequently, the number of positions funded by AmeriCorps grants was not reconciled with the number supportable by the Trust. According to Corporation officials we spoke with, the Trust's funding needs were based on an expected enrollment of 50,000, while the AmeriCorps program office approved grants for about 75,000 participants.

Corporation officials also said that prior to suspending enrollments in AmeriCorps, the Trust was so well funded it did not warrant their attention. They told us that early in the AmeriCorps program, a goal of 50,000 participants annually was used for Trust budgeting purposes. However, it was found that fewer than that number of participants enrolled, and not all of those who participated earned education awards. Additionally, a Corporation budget official said that in the past those who earned education awards were not using them as quickly as expected. Even as the number of AmeriCorps participants grew, the Trust's

accounting records showed an unobligated balance that was high enough for Congress to rescind $111 million over fiscal years 2000 and 2001, resulting in the deobligation of the Trust by this amount. Given this history, Corporation managers did not see the need to reconcile the number of positions created by grant funding with the number the Trust could support. The Trust balance was not viewed as a constraining factor. Because the number of positions approved in the grants was not reconciled with the Trust before grants were awarded, there was the potential for grantees to enroll more participants than the Trust could support.

Grantees Allowed to Adjust Authorized Positions and Not Required to Provide Timely Participant Information

Two program management policies affected the number and type of participants and, therefore, the use of Trust funds. One policy permitted grantees to over enroll participants under certain circumstances with approval from their AmeriCorps program officer. Specifically, the policy allowed grantees to over enroll up to 20 percent. The program year 2002-03 data indicate that while only a few of the grantees increased their enrollment, some increased theirs by more than 20 percent. Another policy allowed grantees to convert positions from full-time to part-time as long as the total number of full-time equivalents supported by the grant did not change. While this practice did not affect the program funds, it did affect the Trust. After the enrollments were suspended, Corporation officials determined that part-time participants used their education awards at a higher rate than full-time participants and therefore the number of part-time participants resulted in a relatively higher level of use for the education award.

The Corporation did not have reliable data on the number of AmeriCorps participants during the period leading up to the suspension. Enrollments are recorded by grantees through the Corporation's Web-Based Reporting System (WBRS). While the enrollment information in WBRS was uploaded into the Corporation's database and used to track education award obligations on a weekly basis, Corporation officials said that discrepancies existed between the number of participants enrolled and the number the Corporation was aware of, because of the length of time between when a participant started to serve and when the grantee entered information into WBRS. A Corporation official said that it was not unheard of for some grantees to be 60 to 90 days late in entering an enrollment into WBRS.

By allowing grantees the flexibility to change the number and type of participants coupled with delays in receiving information on enrollments, the Corporation and AmeriCorps managers could not be certain about the

number of participants. Corporation officials said that this resulting lack of confidence in the data was a contributing factor to the decision to suspend enrollments.

New Policies Established, but Additional Changes May be Needed

In response to concerns that the AmeriCorps program may have enrolled participants without adequately providing for their education awards, the Corporation has developed several new policies. While the Corporation is modifying its practice of when it records obligations, the Corporation overlooks the legal duty it incurs at the time of grant award. Other policy changes are directed to improving communication among key executives, limiting grantees' flexibilities and requiring more timely information on participants. While these policies were only recently introduced, they could, if implemented, help the Corporation keep track of the day-to-day aspects of the AmeriCorps program and provide information needed to monitor the use of the Trust in order to determine whether the Corporation should make adjustments, such as deobligating excess funds. However, data integration problems between WBRS and the program the Corporation uses to track the education awards earned by AmeriCorps participants may hamper the effectiveness of the new procedures.

New Policies for Obligating Funds

The Corporation is in the process of modifying its practices regarding when it will record obligations. The Corporation's General Counsel explained that the Corporation will record obligations at the time of enrollment, instead of on a quarterly drawdown basis and that the obligations will be based on estimates of what these enrolled members will draw down in the future. The Corporation is of the opinion that it does not incur an obligation for an education award until the time of enrollment because it may modify the terms and conditions of a grant, including a reduction in the number of new participants the grantee may enroll, prior to the enrollment of all positions initially approved in a grant, to prevent a shortfall in the Trust. The General Counsel also said "...a binding agreement between the Government and an AmeriCorps member [participant] exists only upon the member's [participant's] authorized enrollment in the Trust."

While it may be true that the Corporation has no binding agreement with a participant until the participant enrolls in AmeriCorps, this is not the controlling consideration for fund control purposes. In our opinion, this view overlooks the legal duty the Corporation incurs at the time of grant award when it commits to funding a specified number of participants and the constraint imposed on the Corporation by the National and

Community Service Act. Specifically, the act says "...[t]he Corporation may not approve positions as national service positions...for a fiscal year in excess of the number of positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year...". The Corporation, by its own admission, may modify the number of approved participants only if it amends the grant agreement to reduce the number of enrolled positions prior to enrollment. When a grant is awarded, the number of new participants approved in the grant establishes a legal duty that can mature into a legal liability for education awards by virtue of actions of the grantee, unless the Corporation modifies the grant prior to participant enrollment. While the Corporation may unilaterally reduce the number of authorized positions awarded to a grantee prior to participant enrollment, from the time of grant award until the Corporation acts to reduce the approved number of positions, the grantee and its subgrantee, not the Corporation, will control the number of participants who may enroll, up to the maximum number of participants the Corporation has approved in the grant agreement.

It is also significant to note that the grantee and subgrantee, by their actions in enrolling participants, not the Corporation, control the amount, ultimately, of the Corporation's liability. If the amount of liability to the government is under the control of the grantee, not the Corporation, the government should obligate funds to cover the maximum amount of the liability. As more information is known, the Corporation should adjust the obligation—deobligate funds or increase the obligation level—as needed.

The Corporation also said that at the time a member enrolls it would record its "...best estimate of the Government's ultimate liability of education awards provided to members [participants] enrolled in the National Service Trust." According to the Corporation's General Counsel, the Corporation's estimates of the amount that enrolled members [participants] will draw down is based on historical information, such as attrition rate and actual usage by participants who complete a term of service and earn an education award. It appears to us that the Corporation is confusing its accounting liability—projections booked in its accounting systems for financial statement purposes, with its legal liability—amounts to be recorded in its obligational accounting systems and tracked in order to ensure compliance with fiscal laws. One of the federal financial accounting standards states that a liability for proprietary accounting purposes is a probable and measurable future outflow or other sacrifice of resources as a result of past transactions or events. Traditionally, projections of accounting liability consider the same factors, such as historical trends, that are considered in the Corporation's model. To track

its obligations, the Corporation should be recording its unmatured legal liability for the education awards, which is the total cost associated with the enrollment of all approved positions. The Corporation's obligation should be recorded as it is incurred and should be calculated by multiplying the number of approved positions in a grant by the total cost of a national service educational award.

More Communication Planned among Key Corporation Managers

Policy changes at Corporation headquarters are designed to improve communication between several key offices and officials. A major change is that the Trust balance is to be a limiting factor on grant awards and, therefore, enrollment levels. In addition, beginning with the 2003 grant cycle[4], one new policy calls for the AmeriCorps director to work with the grants director, the Chief Financial Officer (CFO), and the Trust director to compare projections of positions to be approved in grants with those supported by actual appropriations, and the Chief Executive Officer (CEO) will only approve the number of positions the Trust can support. Additionally, the CEO will approve all AmeriCorps grants after consultation with the CFO on the number of education awards that can be supported by the Trust. Also, the policy states that the CEO, CFO, the Trust director, and the AmeriCorps director will meet at least monthly to review and reconcile enrollment data and Trust data. Through bi-weekly reports, the AmeriCorps director and the Trust director are to keep the CEO and CFO informed of the number of approved and filled positions. The Trust director is to monitor factors relevant to forecasting Trust liabilities and report regularly to the CFO, highlighting deviations from assumptions in the model. Each month the CFO is to use actual enrollment data to re-evaluate the model for forecasting Trust liabilities. If the revision results in a need to change enrollment targets, the CFO will notify the CEO and AmeriCorps director immediately. The CEO will take appropriate action and report any such action to Congress, the Corporation's Board, and the Office of Management and Budget.

Regular meetings and attention to the enrollment data should help the Corporation keep track of the day-to-day aspects of the AmeriCorps program. Such updated information is an important step in monitoring the use of the Trust in order to determine whether the Corporation should make adjustments. For example, if the Corporation obligated the full cost for each of the positions approved at the time of grant award, and later

[4]The Corporation's 2003 grant review cycle began in the spring of 2003.

determined that many of the positions will not be filled, it could reduce the number of approved positions and deobligate some of the funds. The policy changes and new procedures were announced in January. We will continue to monitor the implementation of these policy changes.

Grantees No Longer Permitted to Change Authorized Positions

The Corporation has changed policies regarding its grantees ability to over enroll participants, replace participants who leave with new enrollees and change positions from full-time to part-time. In a January 22, 2003, memorandum, the director of AmeriCorps cancelled the policy that allowed grantees to over enroll members by up to 20 percent over the ceiling established in the grant award in order to take account of attrition. Furthermore, an official said AmeriCorps now considers a position to be filled for the term of the grant once the grantee enrolls a participant, even if the participant later drops out of the program, whether or not an education award was earned. The official said that in the past, grantees could enroll a new member to serve out the balance of the term if grant funds were available. A Corporation official also said that there is a new policy that restricts grantees from converting full-time positions to part-time positions. Grantees must now request and receive approval from the Corporation before such changes can be made.

Since grantees will not be permitted to modify the number and type of authorized positions, the Corporation's ability to manage the AmeriCorps program should improve. Most 2003 grant positions have not yet been awarded; therefore, it is too early to tell whether these new policies will be effective. We will monitor these policies and assess the extent to which they have been implemented as we complete our work.

Grantees Will Be Required to Report Participant Information within 30 days, but Data Reconciliation Problems May Need To Be Addressed

In January 2003 the Corporation informed all grantees that AmeriCorps will require timely reporting of participant information to ensure that the Trust database receives current information on the number of participants eligible for an education award. Grantees will be required to keep AmeriCorps informed of the number of participants offered positions and the number who accept and enroll and to document enrollment through WBRS no later than 30 days after participants start working. The memorandum warns grantees that failure to comply with this requirement could result in reductions in the number of positions or termination of the grant. Additionally, the memorandum directs state commissions and other AmeriCorps grantees—the organizations responsible for the oversight of subgrantees—to implement procedures to ensure that timely notification

of participant commitments and enrollments is part of their review and oversight functions.

Furthermore, the Corporation has made changes to WBRS, which is used to track participant, grant, and budget information. First, controls have been put in place to limit the number of positions listed in WBRS to no more than the number of approved positions. The Corporation's Biweekly Trust Enrollment Summary, as of March 2003, shows that award totals are being tracked and compared with the data estimates in the Trust. However, officials told us that there are some data reconciliation problems between WBRS and the program used by the Corporation to track the education awards earned by AmeriCorps participants. Corporation staff have had to make manual adjustments to reconcile the data.

Accurate and timely information about enrollments should help the Corporation and AmeriCorps manage the program. As grants are awarded, we will be able to assess whether the policies have been fully implemented.

Conclusion

The Corporation's new policies, if fully implemented, should help the Corporation manage the AmeriCorps program by providing better information on day-to-day operations. However, without obligating the full amount associated with all of the positions authorized in the grants, the Corporation remains at risk of having the actual number of enrollments exceed the estimated number the Trust can support. We will monitor the implementation of the Corporation's new policies as we continue our review.

GAO Contact and Acknowledgments

For further information regarding this statement, please call Cornelia M. Ashby at (202) 512-8403 or Susan A. Poling at 202-512-5644. Individuals making key contributions to this testimony included Carolyn M. Taylor, Tom Armstrong, Anthony DeFrank, Joel Marus, and Hannah Laufe.

Appendix I: Obligational Practices of the Corporation for National and Community Service

United States General Accounting Office
Washington, DC 20548

B-300480

April 9, 2003

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

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

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

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

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

BACKGROUND

The Corporation for National and Community Service was created to help community needs in education, the environment, and public safety, to expand educational opportunity by rewarding individuals who participate in national service, and to encourage citizens to engage in national service. National and Community Service Trust Act of 1993, Pub. L. No. 103-82, 107 Stat. 785, 42 U.S.C. § 12501. One of the three national service programs the Corporation oversees is AmeriCorps. Participants in the AmeriCorps program who successfully complete a required term of service earn a national service educational award of up to $4,725 that can be used to pay for college, graduate school, an approved school-to-work program, or qualified student loans. 42 U.S.C. § 12604(a); 45 C.F.R. § 2527.10. Participants who earn the award have up to 7 years in which to use it. 42 U.S.C. § 12602(d)(1). While the Corporation pays the education benefits directly from the Trust, 42 U.S.C. § 12601(c), the Corporation also is authorized to make grants for the purpose of assisting grant recipients in carrying out national service programs. 42 U.S.C. § 12571(a). The Corporation provides grant funds for program costs, including a stipend, and health and child care coverage. In its grants, the Corporation also approves enrollment of a specified number of new participants. See, e.g., AmeriCorps Grant Award to City Year, Inc., Aug. 3, 2000.[1] Most of the grant funding from the Corporation for AmeriCorps programs goes to governor-appointed state service commissions, which award subgrants to nonprofit groups, who then enroll the AmeriCorps participants. Corporation for National and Community Service website, http://www.nationalservice.org.

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

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

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

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

ANALYSIS

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

Determining the Obligational Event

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

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

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

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

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

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

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

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

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

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

Amount of the Obligation

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

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

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

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

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

Anthony H. Gamboa
General Counsel

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