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Title: Income Disregard Provisions

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Topic: Income Disregard Provisions

Summary: This details statutory provisions that address income disregard for people who serve in Senior Corps and AmeriCorps VISTA

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

TO: Directors of Foster Grandparent, Senior Companion, RSVP, Senior Demonstration, and VISTA Projects

FROM: Timothy F. Noelker
General Counsel

A handwritten signature in blue ink that reads "Timothy F. Noelker".

SUBJECT: Income Disregard Provisions for participants in Senior Corps and AmeriCorps VISTA Programs

CNCS has statutory provisions that address "income disregard." The provisions apply when Federal, state, and local governmental entities determine whether people who serve through Senior Corps and AmeriCorps VISTA are eligible for assistance and benefits. We have written this memorandum so that you can help ensure that our provisions are applied correctly.

Section 404 of the Domestic Volunteer Service Act of 1973, as amended (DVSA), addresses income disregard. It applies to participants in AmeriCorps VISTA and in Senior Corps programs: Senior Companions, Foster Grandparents, RSVP, and Senior Demonstration Program Volunteers.

The relevant part of Section 404 states:

(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).

Subsection (f) (1) says that income disregard provisions do not apply if participants get payments for their service that are equivalent to or greater than the applicable minimum wage. It is important for governmental entities to know that only CNCS may make this determination. To date, payments to participants have not equaled or exceeded the greater of the federal or state minimum wage. Therefore, income disregard rules apply.

Section 418 of the DVSA applies only to Senior Corps programs. It states:

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, sections 404 and 418 mean that:

- (1) When a government program is determining a person's eligibility for public assistance or services, or whether to reduce or eliminate these, it may not take into account payments the person got through service under the DVSA.
- (2) A government program may not deny assistance because a service participant fails or refuses to look for or accept employment or training. This includes welfare to work programs.
- (3) Payments to service participants cannot be treated as wages or compensation for any government purposes.

Please share this memorandum with anyone with questions concerning this issue. In the event this memorandum does not resolve the issue, please contact any of these attorneys in the Office of General Counsel:

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