AMERICORPS RULEMAKING II
SIDE BY SIDE OF SUBSTANTIVE CHANGES

TOPIC	CURRENT	FINAL PROPOSED RULE
Member evaluations	Grantees must evaluate members at mid- and end of term.	Removes the mid-term evaluation requirement for those members who leave service early. Adds language to preamble about the structure and documentation of the evaluation. Adds language stating that completion of service hours isn't necessary for satisfactory service and that release for cause is not a per se disqualification from serving a second term.
Performance measurement	Grantees are required to report on outputs at the end of the first year, outputs and intermediate outcomes at the end of the second year, and outputs, intermediate outcomes, and end outcomes by the end of year three.	Changes requirement so that grantees must report on outputs at the end of the first year and outputs and intermediate outcomes in years two or three, but are not required to report on end outcomes.
National service insignia	Restrictions are focused on grantees	Clarifies that the use of national service insignia is subject to Corporation approval.
False or misleading statements	Potential gaps in ability to recover funds improperly received.	Adds provision stating that an individual who makes a materially false or misleading statement is subject to having the benefit forfeited and the qualification revoked.
Inspector General access to grantee records	IG was not included in one government-wide regulation's list of those with access to grantee records.	Adds IG to list.
State service plans	Regulations include overlapping requirements that go beyond statute	Codifies one list of requirements streamlined to match statute.

In addition to these substantive changes, the proposed rule will also codify long-standing grant provisions or other practices, and make technical changes in the following areas:

TOPIC	FINAL PROPOSED RULE
Definition of Participant	Adds "member" to regulations as synonymous with "participant."
Prohibited Activities	Codifies voter registration drives in regulatory list of prohibited activities (omitted in earlier rulemaking).
Living Allowance Disbursement	Codifies long-standing rules relating to the distribution of the living allowance (not a wage, regular payments, no lump sum payment)
Living Allowance Waiver	Codifies long-standing permission for an individual to waive receipt of the living allowance
Civil Rights	Codifies notice requirements and language on the right to file a complaint.
State Commission Membership	Aligns State Commission membership requirements to the statute.
Prohibition on Split-funded Project	Clarifies definition of "same project" and codifies current practice of allowing applicants to submit more than one applicant for the same project with the understanding that only one may be funded.
Small state minimum and timeframe for formula requests (non regulatory issue)	Beginning in FY 2008, the deadline will be earlier. Any unrequested funds remaining after the deadline will be reallocated to small states whose initial allocations are less than $500,000 and for other authorized purposes, as appropriate.

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Harris	Unincorporated areas of Harris County (08–06–0268P).	August 18, 2008; August 25, 2008; *Houston Chronicle.*	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	December 23, 2008	480287
Utah: Davis	City of Kaysville (08–08–0369P).	August 21, 2008; August 28, 2008; *Standard Examiner.*	The Honorable Neka Roundy, Mayor, City of Kaysville, 23 East Center Street, Kaysville, UT 84037.	December 26, 2008	490046
Virginia: Fauquier	Unincorporated areas of Fauquier County (08–03–0544P).	August 13, 2008; August 20, 2008; *Fauquier Times Democrat.*	The Honorable Chester Stribling, Chairman, Board of Supervisors, Fauquier County, 10 Hotel Street, Warrenton, VA 20186.	July 31, 2008	510055

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 10, 2008.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–21689 Filed 9–16–08; 8:45 am]

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2513, 2516, 2517, 2520, 2521, 2522, 2523, 2524, 2540, 2541, and 2550

RIN 3045–AA23

AmeriCorps National Service Program

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service ("the Corporation") is issuing several amendments to existing provisions relating to the AmeriCorps national service program and adding rules to clarify the Corporation's prohibition on making false or misleading statements and requirements for participant evaluations, living allowance disbursements, multiple applications for the same project, use of national service insignia, and other requirements.

DATES: This final rule is effective November 17, 2008.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this rule in an alternate format.

SUPPLEMENTARY INFORMATION:

List of Topics

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I. Background

Under the National and Community Service Act of 1990 ("NCSA" or "the Act"), the Corporation makes grants to support national and community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides educational awards to, and certain interest payments on behalf of, AmeriCorps participants who successfully complete a term of service in an approved national service position.

On May 20, 2003, the Corporation's Board of Directors ("the Board") approved a report issued by the Board's Grant-making Task Force in which the Task Force recommended that the Corporation undertake efforts to streamline and improve our current grant-making processes. Among other actions, the Task Force recommended that the Corporation update the grant-making review and selection criteria, simplify the application process, evaluate the Corporation's grant requirements and assess whether requirements should and could be changed, and eliminate or streamline annual guidance.

On February 27, 2004, President Bush issued Executive Order 13331 aimed at making the national and community service program better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to community organizations, including faith-based organizations. The Executive Order directed the Corporation to review and modify its policies as necessary to accomplish these goals.

This rulemaking is the second of two, originally initiated in 2004. The first rulemaking focused on sustainability and the limitation on the Federal share of program costs. The first rulemaking was completed in July, 2005, and became effective September, 2005. This rulemaking is intended chiefly to clarify several changes made in the first rulemaking, streamline and improve our current grant-making processes, strengthen accountability, and otherwise improve upon the operations of the AmeriCorps State and National program.

II. Public Comments

The Corporation published a proposed rule in the **Federal Register** of November 19, 2007 (72 FR 64970) with a 60-day comment period. In addition to accepting comments in writing, the Corporation held two conference calls. During the public comment period, the Corporation received 3 written comments and 5 oral comments from grantees, the Corporation's Inspector General, and other interested parties.

The comments expressed views on the merits of particular sections of the proposed regulations, as well as some broader policy statements and issues. Acknowledging that there are strong views on, and competing legitimate public policy interests relating to, the issues in this rulemaking, the Corporation has carefully considered all of the comments on the proposed regulations.

The Corporation has summarized below the major comments received on the proposed regulatory changes, and has described the changes we made in the final regulatory text in response to the comments received. In addition to the more substantive comments below,

the Corporation received some editorial suggestions, some of which we have adopted. The Corporation has also made minor editorial changes to better organize the regulatory text. Finally, the Corporation received some comments on issues outside the scope of the proposed rule which the Corporation does not address in the discussion that follows.

III. Specifics of the Final Rule and Analysis of Comments

As discussed in more detail below, the final rule:

- Amends the definition of the term *participant* to acknowledge the frequently-used term *member* as synonymous;
- Adds voter registration to the list of prohibited activities for AmeriCorps members and staff while attributing time to the AmeriCorps program;
- Removes the requirement that grantees conduct mid-term evaluations on AmeriCorps members who leave service early;
- Changes the requirements surrounding end-of-term evaluations to clarify that completion of service hours is not necessarily required in order for a member's service to be considered satisfactory;
- Clarifies that a release "for cause" is not a *per se* disqualification for serving a second term of service;
- Specifies the manner in which grantees must disburse living allowances to members;
- Clarifies a member's ability to waive the living allowance;
- Codifies the circumstances under which a program may submit more than one application to the Corporation for the same project;
- Removes the requirement that grantees individually report on end-outcomes;
- Codifies the Civil Rights notice requirements for grantees;
- Specifies penalties for using the Corporation's national service insignia without the Corporation's authorization;
- Specifies the consequences for making a false or misleading statement to the Corporation;
- Reinforces the Inspector General's access to grantee records;
- Amends the State Commission composition requirements to conform them to statutory requirements; and
- Consolidates the requirements for State Plans.

A. Definition of "Participant" (§ 2510.20)

This rule amends the definition of the term participant to acknowledge the frequently-used term *member* as synonymous.

B. Prohibited Activities: Voter Registration (§ 2520.65)

In 1994, the Corporation issued regulations in part 2520 regarding prohibited activities for AmeriCorps members. In 2002, the Corporation strengthened the list of prohibited activities by adding items from sub-regulatory grant provisions. At that time, the Corporation inadvertently omitted the sub-regulatory prohibition on AmeriCorps members engaging in voter registration in rulemaking. This rule adds this longstanding prohibition to our regulations.

C. Participant Evaluations and Eligibility To Serve a Second Term of Service (§ 2522.220)

Mid-term Evaluations

Our regulations formerly required programs to conduct end-of-term and mid-term evaluations on AmeriCorps participants. Due to the fact that participants occasionally leave service early, either for cause or for compelling personal circumstances, the Corporation has determined that it is not always practicable or possible for a program to perform an official review of a participant's performance in the middle of the term. This rule removes the requirement that programs conduct mid-term evaluations for those participants who leave AmeriCorps service early. Please note that end-of-term evaluations are required for all participants, regardless of whether they leave early or on time.

One commenter asked for clarification on the timing of and reason for leaving early that would result in a program not being required to conduct a mid-term evaluation. Essentially, programs are not required to conduct a mid-term evaluation if the member leaves before the mid-term evaluation would have otherwise reasonably occurred. The reason for the member's departure is not relevant.

Another commenter asked, in a situation in which a member transfers from one program to another, whether the second program is obligated to obtain the mid-term evaluation from the first program, if there was one. The Corporation will address this question in sub-regulatory guidance.

The Corporation also wishes to clarify its intent with regard to the documentation of mid-term evaluations. We require programs to engage in mid-term evaluations, but have not provided guidance as to the structure or content of these reviews. We expect programs to tailor mid-term evaluations to fit the particular needs of the individual program. Likewise, while we require that a program document that a mid-term evaluation occurred, there is no specific required format for this documentation. Rather, the grantee should maintain documentation for each member that it has determined to be helpful to the program in conducting the end-of-term evaluation, whether that be a rating system, a narrative, notes from the mid-term evaluation interview, or other documentation.

End-of-Term Evaluations and Eligibility To Serve a Second Term of Service

The Corporation's regulations require grantees to conduct an end-of-term evaluation for each AmeriCorps participant. The purpose of this evaluation is to answer two questions: (1) Whether the participant is eligible to receive an education award; and (2) Whether the participant is eligible to serve a subsequent term of service.

To answer the first question, we look to Section 146(a) of the Act, which states that a participant is eligible to receive an education award only if the participant "successfully completes the required term of service" and Section 147(c), which states that a participant released for compelling personal circumstances is eligible to receive "that portion of an education award * * * that corresponds to the quantity of the term of service actually completed."

The second question is governed by Section 138(c) of the Act, which states that a participant is only eligible to serve a subsequent term of service if the participant "performed satisfactorily in [the] first term of service." Section 138(f) of the Act directs the Corporation to "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."

Pursuant to this section, the Corporation previously issued regulations stating that, in determining whether a participant's performance was satisfactory, the program must assess, among other things, whether the participant satisfactorily completed assignments, tasks, or projects and whether the participant completed the required number of hours for the term of service. (45 CFR 2522.220(d)).

The Corporation did not intend to suggest that completion of service hours is a prerequisite for a determination that a participant served satisfactorily. On the contrary, an individual released for cause may, under some circumstances, be considered to have served satisfactorily and thereby be eligible to serve a subsequent term. As we stated

in the preamble to the proposed rule in 1999, "a release for cause may cover a wide variety of circumstances and does not necessarily mean that a participant has engaged in wrongdoing or misconduct." (64 FR 17302). Furthermore, as provided in our long-standing AmeriCorps grant provisions, "a member who is released for cause from a first term for personal reasons * * * but who, otherwise, was performing well up until the time [the member] decided to leave, would not be disqualified for a second term so long as [the member] received a satisfactory performance evaluation for the period * * * served." (2007 AmeriCorps Grant Provisions, IV.G.1).

The final rule amends the Corporation's regulations to clarify that those participants who are released for cause but who nonetheless receive a satisfactory performance review may be eligible to serve a second term of service in AmeriCorps. To make this clear, this rule makes three significant changes. First, it separates the end-of-term evaluation into two parts: (1) A determination of whether the participant is eligible to receive an education award; and (2) a participant performance and conduct review to determine whether the participant is eligible to serve a subsequent term. Second, it changes the regulatory language relating to the participant performance and conduct review to be inclusive of participants who are released from service early. Lastly, it makes clear that a release for cause is not a per se disqualification from serving a second term of service. Regarding the eligibility of a participant released for cause to serve a second term, it modifies the language relating to the participant performance and conduct review to ensure that programs are able to consider the participant's conduct in assessing whether the service was satisfactory.

The partition of the end-of-term evaluation will enable a program to consider a member's eligibility to serve a second term separately from a member's eligibility to receive an education award. An individual who serves satisfactorily may be eligible for a second term, regardless of whether the individual earned an education award. For example, an AmeriCorps member who decides to leave early to take advantage of a unique scholarship opportunity would not be eligible to receive an education award, but may be eligible to serve a second term of service if the member served satisfactorily prior to leaving early. Contrarily, an AmeriCorps member who did not serve satisfactorily and who exited early for the same reason would not earn an education award and would also be ineligible to serve a second term of service.

It is not necessary to successfully complete a term of service for a member's service to be considered satisfactory. However, a determination that a member is eligible to receive an education award based on successful completion of the agreed upon term of service necessarily encompasses a determination that the member served all the required hours, performed satisfactorily, and fulfilled all other requirements set by the program. The table below illustrates this rule in a simplified form:

	And...	Eligible for an education award?	Eligible for a second term?
If a member performs satisfactorily	Completes service hours	Yes	Yes.
	Does not complete service hours	No	Yes.
If a member does not perform satisfactorily	Completes service hours	No	No.
	Does not complete service hours	No	No.

The final rule modifies the language of the participant performance and conduct review to ensure it incorporates those participants who are released early. In the proposed rule, we proposed a requirement for programs to assess whether a participant satisfactorily completed assignments, tasks, or projects, or, for those participants released from service early, whether the participant completed those assignments, tasks, or projects that the participant could reasonably have completed in the time the participant served. (72 FR 64970, November 19, 2007).

One commenter noted that the use of the word "completed" in the proposed rule may have unintended negative consequences as an individual who left early may not have been able to complete anything in the time served. The Corporation agrees that the phrase "reasonably could have completed" is not consistent with our intent. Thus, in the final rule, the performance and conduct review will assess, in addition to any criteria developed by the program, whether the participant 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 the participant could reasonably have addressed in the time the participant served."

The rule also changes the language so that the evaluation of the participant will henceforth occur "at the end" of the term of service, as opposed to "upon completion" of the term. By changing the language from "completion" to "end," the Corporation intends that programs should evaluate all members, even those who do not technically complete the originally agreed-upon number of service hours.

During the public comment period, we received several comments on the eligibility of participants released for cause to serve second terms of service. One commenter expressed concern that the proposed rule would broaden the eligibility for a second term of service. In particular, the commenter noted that individuals who are released for misconduct, conviction of a felony, or for the sale or distribution of a controlled substance, may be eligible to serve a second term of service. The Corporation does not agree that the rule broadens eligibility for a second term. This rule codifies a practice supported by existing law; there is nothing in our current regulations or authorizing legislation to prohibit an individual who is released for cause but who serves satisfactorily in the first term of service from serving a subsequent term of service.

However, the Corporation does agree that a member's good conduct is a component of satisfactory service. As stated in Section 177(e) of the Act, AmeriCorps programs must "establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions." Our proposed rule required programs to examine whether the participant "has met any other *performance criteria*" communicated by the program. To ensure that programs do not misinterpret this language to mean that the participant's performance of duties is the only factor to consider in determining whether service was satisfactory, the Corporation has

changed the rule from the proposed version by removing the word "performance" to clarify our intent that programs assess whether the participant has met any criteria—including performance criteria and standards of conduct—established and communicated by the program. In addition, we have changed the name of the review to a participant performance and conduct review.

For example, consider a program whose criteria include standards of conduct prohibiting members from engaging in any activity that may physically injure other members of the program and which require immediate release for cause for any member that violates this particular prohibition. Under the final rule, the program would give a member who violated this provision an unsatisfactory performance and conduct review upon release regardless of how impressive the member's service was up to that point.

One commenter suggested that the Corporation hold ineligible for subsequent service those members who were found to have engaged in misconduct, or who have had a detrimental effect on others, and to establish this standard through regulation. This commenter recommended that the Corporation develop a list such as that provided in the sample rules of conduct set out in the sample member contract distributed by the Corporation.

As stated above, programs are required, by statute, to establish and enforce standards of conduct. Because member selection and release are the responsibilities of the grantee, and not the Corporation, we generally defer to the individual programs to establish these standards. The only offenses that the Corporation has mandated will render an individual ineligible to serve a term of service in AmeriCorps at this time are those that result in the individual being subject to a State sex offender registration requirement. As stated in the Corporation's final rule on criminal background checks, the Corporation intends to consider, at a later date, adding other disqualifying factors, including specific offenses. (72 FR 48574, August 24, 2007).

Notably, individuals who were released for cause from the first term of service are required under our regulations to disclose this fact on any subsequent application for service with an AmeriCorps program. (45 CFR 2522.230(b)(2)). Consequently, the Corporation anticipates that programs will consider the facts surrounding the prior release when determining whether to select the individual for service.

One commenter stated that the proposed rule should provide that a release for cause from a term of service counts as one of the two terms of service that may be subsidized with federal funds. We agree that our regulations need to clarify this point. Our regulations state that an AmeriCorps participant may only receive an education award, a living allowance, health care; and child care benefits supported with federal funds for the first two successfully-completed terms of service. (45 CFR 2522.220(b)). Clearly, a term in which a member exits for cause is not a successfully completed term. Section 140(h) of the Act limits the number of terms of service which can be supported with federal funds to two, but does not require that those terms be successfully completed. The final rule amends section 2522.220(b) by removing the words "successfully completed." In addition, the final rule adds language to clarify that a release for cause counts as one of the two terms of service for which an individual may receive benefits supported with federal funds.

In making this change, the final rule also adds language to clarify that if a participant is released for cause for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the two terms of service for which an individual may receive benefits supported with federal funds.

One commenter expressed concern that our proposed section 2522.230(b)(6), which states that a release for cause is not a *per se* disqualification from serving a second term of service, would allow an individual to serially start programs and leave for cause prior to completing 15% of the term of service. The rule that a release for misconduct prior to serving 15% of a term counts as one of the two terms of service will prevent any person who is released for misconduct from serially starting and exiting programs. While there is no prohibition on an individual making repeated efforts to serve in AmeriCorps and leaving prior to serving 15% so long as the cause for exiting the program is not misconduct, the My AmeriCorps portal will enable programs to see each program with which an applicant has served, regardless of the length of the service. Thus, programs will be able to identify an individual who habitually enters and leaves AmeriCorps service prior to serving 15% of the term, and take that fact into account in making their selection decisions.

One commenter recommended that the Corporation establish a third category for release in addition to releases for cause or for compelling personal circumstances because a release for cause seems to indicate a release for disciplinary reasons. The Corporation cannot create a third or additional category of release, as section 139(c) of the Act identifies only two types of release: for cause and for compelling personal circumstances. However, as discussed above, participants who are released because they engaged in misconduct should be treated differently than participants who are released for a cause the program feels is reasonable (such as, for example, taking advantage of a limited time scholarship opportunity); as a release for cause covers both of these types of situations, the final rule requires programs to consider the circumstances surrounding an individual's release in determining whether a participant served satisfactorily.

One commenter suggested that the Corporation's premise that the statute limits the ability of a participant to leave service either for cause or for compelling personal circumstances is erroneous because a participant may resign. The same commenter noted that a release "for cause" should be for reasons that are sufficient to warrant removal. While this interpretation of "for cause" is accurate in other legal contexts, it is used in our authorizing statute as one of two possible characterizations of a release for determining whether a participant may receive an education award. While participants may resign from service, each resignation must be characterized as a release for cause or for compelling personal circumstances in order to determine whether the participant will receive a portion of the education award. As stated above, a release "for cause" covers all circumstances that do not meet the definition of "compelling personal circumstances," including some circumstances that would not necessarily warrant removal in another legal context.

D. Living Allowance Disbursement (§ 2522.245)

The Corporation is in the process of revising the AmeriCorps grant provisions and moving requirements with program-wide applicability to regulation. This final rule codifies the requirements previously articulated in the sub-regulatory grant provisions on how living allowances are to be treated and disbursed. There is no new requirement for how the living allowances must be disbursed; only the location of the requirement has changed.

The intent of this regulation is to ensure that the living allowance is distributed in a manner that fulfills its purpose. AmeriCorps participants are not employees of the programs with which they serve and the living allowance is not considered to be an hourly wage. Rather, the living allowance is intended to be a means to support participants' basic costs of living to ensure that they are able to secure food, clothing, and shelter while performing national service. For this reason, it is important that programs not treat the living allowance as a wage, and not adjust the distribution of the living allowance based on the number of hours a participant serves during a given period of time. For example, a participant who serves for 50 hours one week and 25 the next should receive the same living allowances as if the participant had served 50 hours (or 25 hours) in both weeks. Generally, the living allowance must not increase or decrease but should remain steady just as a participant's living expenses are continuous. However, because the living allowance is intended to support a participant's costs of living, if the cost of food, housing, transportation, or other necessities in a particular area increases, the program may adjust the living allowance accordingly within the overall approved grant amount.

Just as the amount of the living allowance should not fluctuate, the frequency of distribution of the living allowance should be steady and reliable. Programs must provide living allowances at regular intervals, such as weekly or bi-weekly, so that a participant can have regular access to financial support.

The final rule also codifies the existing policy prohibiting the payment of a "lump sums" to a participant who completes the term of service in a shorter period of time than originally anticipated. If a participant starts service later than other participants, the program may not pay the participant an additional sum to "make up" payments missed before the participant began. Likewise, if a participant completes the term of service ahead of schedule, the program may not pay the participant a lump sum equivalent to what the participant would have received.

E. Waiver of Living Allowance by a Participant (§ 2522.240(b)(5))

The Corporation's grant provisions have long provided that an AmeriCorps participant may waive all or part of the living allowance. The final rule adds this provision to regulation. A participant who waives the living allowance may revoke the waiver at any time and may begin receiving a living allowance again prospective from the date the waiver is revoked. The participant may not receive any part of the living allowance attributable to the time period during which the living allowance was waived.

F. Applications for the Same Project (§ 2522.320)

Section 130(g) of the Act states that "the Corporation shall reject an application submitted under this section if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation."

Under the proposed rule, an organization submitting more than one application for the same project must disclose that fact in each application. If the Corporation approves one application for a project, the organization will be deemed to have withdrawn any other application for the same project. In addition, the proposed rule included characteristics that the Corporation will assess in determining whether two projects are the same for purposes of section 130(g).

One commenter expressed concern that the proposed rule would result in further concentration of funding to programs operated by National Direct grantees in large cities, thereby disadvantaging single-state, small non-profits, rural, and faith-based organizations. The Corporation does not agree that the rule will disadvantage single-state and local applicants. Such organizations are free to engage with State Commissions and National Direct grantees in developing programmatic collaborations. Moreover, States have the authority to choose not to put forward programs that could otherwise be funded through the National Direct competition, and the Corporation respects programmatic prerogatives of States.

The same commenter asserted that the proposed rule contradicts Section 130(g) of the Act. In particular, the commenter suggested that there is a contradiction between the language of section 130(g) and the proposed language describing the multiple applications as "pending before the Corporation." We construe "pending" to mean the period of time between selection by the Corporation and execution of a grant award. To avoid confusion on this point, we have revised the language in the final rule to focus on the conditions placed on submission of an application.

To clarify the definition of "same project," the final rule lists the characteristics the Corporation considers in determining whether two projects are the same. The Corporation will consider two projects to be the same for the purposes of Corporation funding if the Corporation cannot find a meaningful difference between the two projects based on a comparison of identifying characteristics. The Corporation may determine that two or more projects are sufficiently different based upon clear distinctions in one or more of the criteria considered. Notably, the characteristics listed in regulation are not exhaustive, as the Corporation may consider additional factors in determining a project's specific, identifiable activities.

For the purpose of determining whether two applications describe the same project, geographic location will be identified as narrowly as possible in order to specify the population served. For example, the operation of a homeless shelter in Brooklyn might—depending on the proposed activities and identifying characteristics—be considered a different project than the operation of a homeless shelter in the Bronx.

The proposed rule stated the Corporation would "consider, among other characteristics: (a) The objectives and priorities of the project; (b) the nature of the service provided; (c) the program staff, volunteers, and participants involved; (d) the geographic location in which the service is provided; (e) the population served; and (f) the proposed community partnerships."

One commenter noted that the language of the proposed rule was unclear, as it did not specify what the Corporation would do with the information considered. The Corporation agrees that the language was not specific, and has clarified the language in the final rule. The final rule reflects the Corporation's intent to compare identifying characteristics of the two projects to determine whether they are the same for the purposes of Corporation funding.

G. Performance Measures (§ 2522.620)

CNCS will continue to require each grantee to submit measures of outputs, intermediate outcomes, and end outcomes, all of which capture the results of its program's primary activity, in the application for funding. It will also continue to require grantees to report on outputs at the end of year one and outputs and intermediate outcomes at the end of years two and three.

Previously, CNCS also required grantees to report on end outcomes at the end of year three. Because end outcomes do not always become evident

until more than three years after the initial intervention, the final rule eliminates the requirement to report separately on end outcomes. The Corporation believes that there is significant value in having a grantee articulate an end outcome for at least one performance measure; end outcomes provide long-term context for the grantee's work. Additionally, the inclusion of end outcomes results in recompleting applications informs the competitive grant process.

H. Civil Rights (§§ 2540.210 and 2540.215)

The Corporation requires all recipients of Corporation grants to abide by applicable federal non-discrimination laws, including relevant provisions of the national service legislation, implementing regulations, and Corporation-distributed policies. It is essential that all participants, staff, and beneficiaries of programs supported by Corporation grants are aware of their rights under these laws and of the availability of the Corporation's impartial discrimination complaint process.

Previously, the Corporation's civil rights notification requirements were included in the annual grant provisions. The final rule has relocated these requirements to regulation. There is no change in the requirements, only in the location of the requirements.

The final rule requires grantees to notify participants, staff, and beneficiaries of the civil rights requirements and available complaint procedures by including this information in materials commonly distributed to members and potential members, including recruitment materials, member contracts, handbooks, manuals, pamphlets, and also by posting it in conspicuous locations, as appropriate. Grantees should ensure that this information is accessible to those participants, staff, and beneficiaries who have limited English proficiency, or who are hearing or visually impaired, by providing it in alternative formats when necessary.

Grantees may obtain sample notification language and other guidance on notification, the Corporation's discrimination complaint procedure, and other general information on prohibited discrimination by contacting the Corporation's Office of Civil Rights and Inclusiveness by mail at Office of Civil Rights and Inclusiveness, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525, by e-mail at *eo@cns.gov*, or by calling (202) 606–7503 or (202) 606–3472 (TTY).

I. Use of National Service Insignia (§§ 2540.500–560)

Currently, grant recipients and other entities engaged in providing national and community services in cooperation with the Corporation are approved to use the national service insignia in accordance with the terms and conditions of their agreements with the Corporation. The Corporation anticipates continuing to administer approvals to use the national service insignia in this manner.

From time to time, however, the Corporation's insignia, including the AmeriCorps logo and other logos associated with the Corporation's programs, have been used without authorization, including by individuals and entities having no relationship with the Corporation. In some cases, the unauthorized use was for commercial purposes that would not have been approved by the Corporation. To better protect the image and integrity of the Corporation's programs, ensure compliance with government-wide rules against improper endorsement of non-Federal entities, and protect the public from possible deception, the final rule adds a new subpart E to part 2540 of Title 45 of the Code of Federal Regulations. The rule provides notice regarding the restrictions on using the Corporation's various insignia and the possible civil and criminal penalties that may incur for unauthorized use of the insignia. Depending upon the nature of the violation, under section 425 of the Domestic Volunteer Service Act of 1973 and 18 U.S.C. 506, 701, and 1017, enforcement of the restriction could result in an injunction on the unauthorized use, a monetary fine, or imprisonment.

J. Disqualification and Forfeiture Based on False or Misleading Statements (§§ 2540.600–670)

The final rule adds a new subpart F, to part 2540 to address individuals who are admitted to a program or who receive program benefits on the basis of false or misleading statements. Occasionally, a member or volunteer in a Corporation-funded program is discovered to have been admitted to the program or accorded a benefit from the program on the basis of false or misleading statements. The final rule provides a means for the Corporation to revoke the eligibility of a person for participation in or a benefit from a national service program if the person was admitted to a program or seeks a benefit from a program on the basis of a false or misleading statement.

In most cases the criteria for qualification to participate in a program or eligibility for a program benefit are set out in the NCSA or the Domestic Volunteer Service Act of 1973, or related appropriations acts. If it is discovered that facts connected to qualification to participate or eligibility for a benefit were false or misleading, the Corporation has an obligation to revoke the person's eligibility and refrain from providing a related benefit to that person. Additionally, the Corporation is legally obligated to recover funds from the person if funds were received on the basis of a false or misleading statement.

The final rule gives individuals suspected of making false or misleading statements the opportunity to respond under a two-tier review process before their eligibility is revoked. Where there are genuine facts in dispute, a telephonic or face-to-face meeting may be included in the second level of review.

The intent of the regulation is to provide a mechanism for revoking the eligibility of individuals who make a false or misleading statement in connection with their application to or enrollment in a national service program and for forfeiting eligibility for a related benefit.

The action and procedures set out in the final rule are intended to supplement, not replace, remedies against offending parties that are available under other laws. Depending upon the nature and scope of a false or misleading statement, other legal action may be taken against the offending party under the False Claims Act, Program Fraud Civil Remedies Act of 1986, Suspension and Debarment regulations under 2 CFR parts 180 and 2200, and other applicable laws and regulations.

One commenter noted that the Corporation included language in the preamble to the proposed rule regarding the materiality of the false or misleading statement, while the rule itself did not address materiality. We have removed any language regarding materiality in the preamble to maintain consistency with our rule language.

K. Inspector General Access to Grantee Records (§ 2541.420)

Section 2541.420(e) is amended to specifically add the Inspector General among the authorities having access to pertinent grantee records. While it has always been understood that the Office of the Inspector General is a component of the awarding agency, the rule is being amended to match the access to records

language in § 2543.53, which specifically names the Inspector General among the authorities having access to grantee records.

L. State Commission Composition Requirements (§ 2550.50)

Section 178(d)(1) of the Act states that "the Chief Executive Officer of a State shall ensure, to the maximum extent practicable, that the membership for 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, plus one additional member, may be from the same political party." Section 178(c)(5) of the Act states that "[t]he number of voting members of a State Commission * * * who are officers or employees of the State may not exceed 25 percent * * * of the total membership of the State Commission."

The final rule conforms 45 CFR 2550.50 to the specific language in the statute, including a clarification that the political affiliation provision applies only to voting members of the State Commission.

M. State Plans (§§ 2550.80–85)

Section 178(e) of the Act requires a State Commission to prepare and annually update a national service plan covering a three-year period. This Plan, previously referred to as a "Unified State Plan," a "State Service Plan," and, presently, a "State Plan," is a document that sets forth the State's goals, priorities, and strategies for promoting national and community service. The Act specifies several components that must be present in the Plan, including the State's efforts to convene, collaborate, or otherwise coordinate with diverse national and community service groups and agencies to accomplish the State's national and community service goals.

The Act gives latitude to the Corporation to establish additional requirements for the contents of the State Plan. Over time, we have found that the State's submission of certain information is mutually beneficial. For example, to enhance communication and coordination between the Corporation and the State, it is useful for us to know how the State is utilizing statewide networks of national and community service groups to achieve its goals and priorities. In addition, the availability of such information serves as a resource for identifying best practices to be shared with other States. By including these elements with the description of a State Commission's duties we eliminated the need to publish State Plan requirements as a separate part; therefore, the final rule strikes part 2513 of Title 45.

Section 2550.80 lists the duties of State entities. The final rule conforms paragraph (a) of this section to the statutory list of responsibilities of State entities with regard to preparation of a State Plan. In addition, the final rule amends this section to include the requirement, previously located in part 2513, that the State Plan incorporate 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." This groups together relevant information and consolidates the regulatory required components of the State Plan. The final rule imposes no new requirements for the contents of the State Plan, while reserving the Corporation's right to request submission of the State Plan in its entirety, in sum, or in part.

The Corporation uses State Plans principally in understanding the State's national and community service goals, priorities, and strategies, not in making future funding decisions or monitoring determinations, risk-based assessments, or State Standards process evaluations.

IV. Summary of Redesignations

The proposed rule will change the location of a number of regulations. The following table is a guide to the current location of a provision and its new location under the proposed rule.

Current location	Proposed location
2520.65(a)(9)	2520.65(a)(10)
2522.240(b)(5)	2522.240(b)(6)
2550.80(a)(3)	2550.80(a)(4)

V. Effective Dates

This final rule will take effect November 17, 2008.

VI. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047, 3045–0117, and 3045–0099.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2513

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2516

Grants administration, Grant programs—social programs.

45 CFR Part 2517

Grants administration, Grant programs—social programs.

45 CFR Part 2520

Grant programs—social programs, Volunteers.

45 CFR Part 2521

Grants administration, Grant programs—social programs.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2523

Grant programs—social programs.

45 CFR Part 2540

Civil rights, Fraud, Grants administration, Grant programs—social programs, Trademarks—signs and symbols, Trust, Volunteers.

45 CFR Part 2541

Grant programs—social programs, Reporting and recordkeeping requirements, Investigations.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

■ For the reasons stated in the preamble, under the authority 42 U.S.C. 12651d, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

■ 2. Amend § 2510.20 by adding a new paragraph (3) to the definition of "participant" to read as follows:

§ 2510.20 Definitions.

* * * * *

Participant.

* * * * *

(3) A participant may also be referred to by the term *member.*

* * * * *

PART 2513—[REMOVED]

■ 3. Remove and reserve part 2513.

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

■ 4. The authority citation for part 2516 is revised to read as follows:

Authority: 42 U.S.C. 12521–12551.

§ 2516.400 [Amended]

■ 5. Amend § 2516.400 introductory text by removing "part 2513" and adding "§ 2550.80(a) of this chapter" in its place.

§ 2516.410 [Amended]

■ 6. Amend § 2516.410(a)(1) by removing "part 2513" and adding "§ 2550.80(a)" in its place.

§ 2516.500 [Amended]

■ 7. Amend § 2516.500(a)(3)(i) by removing "part 2513" and adding "§ 2550.80(a)" in its place.

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

■ 8. The authority citation for part 2517 is revised to read as follows:

Authority: 42 U.S.C. 12541–12547.

§ 2517.400 [Amended]

■ 9. Amend § 2517.400(a)(3) by removing "part 2513" and adding "§ 2550.80(a)" in its place.

§ 2517.500 [Amended]

■ 10. Amend § 2517.500(c)(3) by removing "part 2513" and adding "§ 2550.80(a)" in its place.

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 11. The authority citation for part 2520 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 12. Amend § 2520.65 by redesignating paragraph (a)(9) as (a)(10) and adding a new paragraph (a)(9) to read as follows:

§ 2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

(a) * * *

(9) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;

* * * * *

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

■ 13. The authority citation for part 2521 continues to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 14. In § 2521.30, revise paragraph (a)(4) to read as follows:

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

* * * * *

(a) * * *

(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.

* * * * *

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 15. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911.

■ 16. Amend § 2522.220 by

■ a. Revising paragraph (a) introductory text and paragraph (d); and

■ b. Removing the phrase "successfully-completed" from paragraph (b).

The revisions will read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve more than one term?

(a) *Term of Service.* A term of service may be defined as:

* * * * *

(d) *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.

* * * * *

■ 17. Amend § 2522.230 by adding new paragraphs (b)(6), (b)(7), and (e) to read as follows:

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

* * * * *

(b) * * *

(6) An individual's eligibility for a second 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 § 2522.240(d)(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 two terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

* * * * *

(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 two terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

■ 18. Amend § 2522.240 by:

■ a. Revising the heading of paragraph (b)(4);

■ b. Redesignating paragraph (b)(5) as (b)(6); and

■ c. Adding a new paragraph (b)(5).

The revisions and additions will read as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

* * * * *

(b) * * *

(4) *Waiver or reduction of living allowance for programs.* * * *

(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.

* * * * *

■ 19. Add a new § 2522.245 to read as follows:

§ 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.

■ 20. Revise § 2522.320 to read as follows:

§ 2522.320 Under what conditions may I submit more than one application for the same project?

You may submit more than one application for the same project only if:

(a) You submit the applications in separate competitions (i.e., National Direct, State, Education Award Program); and

(b) You disclose in each application that you have submitted another application for the same project to the Corporation.

■ 21. Add new §§ 2522.330 and 2522.340 to subpart C to read as follows:

§ 2522.330 What happens to additional applications for the same project if the Corporation approves one application?

If the Corporation approves one application for a project, you will be deemed to have withdrawn any other application (or part thereof) for the same project.

§ 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.

■ 22. Amend § 2522.620 by revising paragraph (c) to read as follows:

§ 2522.620 How do I report my performance measures to the Corporation?

* * * * *

(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.

PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

■ 23. The authority citation for part 2523 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

§ 2523.90 [Amended]

■ 24. Amend § 2523.90 by removing "§ 2522.240(b)(5)" and adding "§ 2522.240(b)(6)" in its place.

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

■ 25. The authority citation for part 2524 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

§ 2524.30 [Amended]

■ 26. Amend § 2524.30(b)(4) by removing "2522.240(b)(5)" and adding "2522.240(b)(6)" in its place.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

■ 27. The authority citation for part 2540 is revised to read as follows:

Authority: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653; 42 U.S.C. 5065.

■ 28. Amend § 2540.210 by adding a new paragraph (d) to read as follows:

§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

* * * * *

(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.

■ 29. Add a new § 2540.215 to read as follows:

§ 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.

■ 30. Add a new Subpart E (consisting of §§ 2540.500 through 2540.560) to read as follows:

Subpart E—Restrictions on Use of National Service Insignia

Sec.
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 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

■ 31. Add a new Subpart F (consisting of §§ 2540.600 through 2540.670) to read as follows:

Subpart F—False or Misleading Statements

Sec.
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?

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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

PART 2541—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 32. The authority citation for part 2541 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.* and 12501 *et seq.*

■ 33. Amend § 2541.420 by revising paragraph (e)(1) to read as follows:

§ 2541.420 Retention and access requirements for 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.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

■ 34. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

■ 35. Amend § 2550.50 by revising paragraph (e) to read as follows:

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

* * * * *

(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.

* * * * *

■ 36. Amend § 2550.80 by revising paragraph (a) to read as follows:

§ 2550.80 What are the duties of the State entities?

* * * * *

(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 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 be submitted, in its entirety, in summary, or in part, to the Corporation upon request.

* * * * *

■ 37. Add a new § 2550.85 to read as follows:

§ 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).

Dated: September 10, 2008.

Frank R. Trinity,

General Counsel.

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