Corporation for
NATIONAL & COMMUNITY SERVICE

February 23, 2010

MEMORANDUM

TO: Foster Grandparent, Senior Companion, and AmeriCorps VISTA Project Directors

FROM: Frank R. Trinity Frank R. Trinity
General Counsel

SUBJECT: Income disregard provisions under the Domestic Volunteer Service Act of 1973

This memorandum concerns "income disregard" provisions applicable to national service participants who receive benefits under the Domestic Volunteer Service Act of 1973 (DVSA). Specifically, the memorandum is intended to ensure that governmental (Federal, state, and local) entities are aware of, and properly apply, sections 404 and 418 of the DVSA in treating benefits provided to Senior Companions, Foster Grandparents, Retired and Senior Volunteers, Senior Demonstration Program Volunteers, and AmeriCorps*VISTA members.

Section 404 of the DVSA states, in relevant part, as follows:

> (f)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of, or eligibility for, assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is greater.
>
> (f)(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under Title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

42 U.S.C. § 5044 (f) (1) and (2).

The income disregard rule applies except when payments to national service participants are equivalent to or greater than the applicable minimum wage. Only the Corporation for National and Community Service may make this determination. To date, payments to such participants have not been determined to exceed the applicable minimum wage. Therefore, the income disregard rule applies to DVSA-supported national service participants.

Section 418 of the DVSA also states as follows:

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

42 U.S.C. § 5058

In summary,

- a government program may not consider payments to national service participants under the DVSA in determining to reduce or eliminate the participant's level of, or eligibility for, public assistance or services;

- entitlements to assistance may not be denied because of a participant's failure or refusal to seek or accept employment or training, including those established for welfare to work programs; and

- no payments to participants shall be considered wages or unemployment for the purposes of any tax, unemployment, workers' compensation, or for similar benefit payments.

Please share this memorandum with anyone with questions concerning this issue. In the event this memorandum does not resolve the issue, please contact either Tom Bryant (202-606-6678) or Andrea Grill (202-606-6674) in the Office of General Counsel.