



[BILLING CODE 6050-28-P]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1206, 1210, 1211, 1216, 1217, 1218, 1220, 1222, 1226, and 2556

RIN 3045-AA36

Volunteers in Service to America

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (CNCS) publishes new regulations under the Domestic Volunteer Service Act of 1973, as amended, and the National and Community Service Act of 1990, as amended, for the Volunteers in Service to America (VISTA) program, including certain changes to update existing regulations.

DATES: This rule is effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Calvin Dawson, AmeriCorps

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SUPPLEMENTARY INFORMATION:

I. Background

The Economic Opportunity Act of 1964 created the Volunteers in Service to America (VISTA) program. The VISTA program, sometimes referred to as the domestic

Peace Corps, has operated since the first VISTA volunteers (VISTAs or VISTA members) were placed in service in December 1964.

In 1971, the VISTA program was transferred from the Office of Economic Opportunity to the former Federal agency, ACTION (the Federal Domestic Volunteer Agency). In 1973, Congress enacted the Domestic Volunteer Service Act of 1973 (DVSA), the VISTA program's enabling legislation. The VISTA program continues to retain its purpose, as stated in the DVSA, "to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling individuals from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals afflicted with such problems."

In 1994, the Corporation for National and Community Service (CNCS) was established pursuant to the National and Community Service Trust Act of 1993; at this time, the operations of all service programs previously administered by ACTION, including the VISTA program, began to be administered by CNCS. The VISTA program also became known as the AmeriCorps VISTA program, one of three AmeriCorps programs now administered by CNCS. The other two programs were, and continue to be: 1) the AmeriCorps State and National program; and 2) the AmeriCorps National Civilian Community Corps (NCCC). Since 1994, the VISTA program continues to be primarily operated and administered under the DVSA. The other two AmeriCorps programs are

operated under the National and Community Service Act of 1990 (NCSA).

In 2009, Congress enacted the Edward M. Kennedy Serve America Act of 2009 (Serve America Act), which contained certain amendments to both the DVSA and the NCSA. With regard to the VISTA program, the Serve America Act amendments largely related to the Segal AmeriCorps Education Award, a type of end-of-service award for which a VISTA member may be eligible upon successful completion of a term of VISTA service.

II. Scope of Final Rule

This rule covers core aspects of the VISTA program: (a) entities that are sponsors for VISTA projects; and (b) individuals who are applicants, candidates, and VISTAs (including VISTA leaders and VISTA summer associates), serving at project sites. This rule has four purposes.

First, it conforms the existing regulations to the fact that CNCS administers the VISTA program. References in the existing regulations to the former Federal agency, ACTION, and the administrative structure of ACTION are changed to reflect CNCS and its administrative structure.

Second, this rule codifies the VISTA rules in the same location as the rules for CNCS's other programs. The existing VISTA regulations are codified at 45 CFR parts 1206, 1210, 1211, 1216-1220, 1222, and 1226. This rule places the VISTA regulations within the regulations for CNCS and the other CNCS programs at 45 CFR parts 2505-2556.

On a related note, existing program regulations at 45 CFR parts 1206, 1216, 1220, and 1226, currently apply both to the VISTA program, and to CNCS's National Senior

Service Corps programs. This rule places existing program regulations, as they apply to the VISTA program, at 45 CFR parts 2505-2556. Existing program regulations as they apply to the National Senior Service Corps programs will remain, at this time, at 45 CFR parts 1206, 1216, 1220, and 1226. To accommodate the relocation of the existing program regulations as applied to the VISTA program, certain technical changes to the existing program regulations, as applied to the National Senior Service Corps programs, are warranted. These technical changes are not substantive, but are necessary to address the removal of references to the VISTA program and to reflect CNCS and its current administrative structure.

Third, this rule addresses regulations on the VISTA program's elements. The existing regulations cover a limited range of topics. This rule covers a wide range of topics, and updates the topics covered under existing regulations, including: VISTA application and termination processes, volunteer grievance procedures, competitive service eligibility, payment of volunteer legal expenses, nondisplacement of workers, VISTA leaders and summer associates, restrictions for VISTAs on certain political activities under the Hatch Act and other federal laws, and participation of program beneficiaries. Subpart A gives general program information: purpose, basic program design, definitions used in the rule, and waiver. Subpart B sets out requirements for a VISTA sponsor, and for a sponsor to support a VISTA. Subpart C pertains to being a VISTA, and the requirements for applying to become a VISTA. Subpart D provides the service terms, protections, and benefits that apply to a VISTA. Subpart E addresses termination for cause procedures. Subparts F and G, concern, respectively, VISTA projects with summer associates, and VISTA projects with VISTA leaders. Subpart H

gives restrictions and prohibitions on certain political activities for all VISTAs, sponsors, and project sites.

Fourth, this rule updates the provisions of the existing regulations. These changes are described here:

As it applies to the VISTA program, 45 CFR part 1206, which deals with project suspension and termination, is moved to 45 CFR part 2556, subpart B with most substantive provisions remaining unchanged. Under this final rule, the provisions for suspension remain unchanged, except that the provisions for summary suspension are eliminated and the provisions for suspension on notice are retained. This has the effect of giving notice to sponsors for all suspensions. Under the final rule the provisions for termination remain unchanged, except that a second CNCS review has been eliminated. Experience has shown that a lengthy termination review process is not beneficial to VISTAs at the project in question, unduly consumes the sponsor's staff time and other resources, creates uncertainty for project beneficiaries, and exhausts VISTA resources that could be put to use for the benefit of project beneficiaries.

The regulations at 45 CFR part 1210, which deal chiefly with early termination of a VISTA, are moved to 45 CFR part 2556, subpart E and changed to improve the cost-effectiveness of the provisions and increase efficiency of VISTA program functions. The new provisions for early termination remain substantively the same in many respects. However, the early termination for cause process is modified. While the process retains more than sufficient due process in the form of written notification and appeals at two levels, the inclusion of a hearing examiner in that process is removed. Experience has shown that a multi-layered termination process is protracted, unduly burdensome, and

incompatible with a service term that can last no more than a year's time. Such a process creates potential harm to the operations of the project and its beneficiaries where the VISTA had been assigned, prolongs uncertainty for the VISTA subject to the process, and inordinately consumes VISTA program resources that could be put to use for the benefit of project beneficiaries.

Regulations in 45 CFR part 1211 on grievance procedures for VISTAs are moved to 45 CFR 2556.345-2556.365 and updated to reflect the use of electronic communication technology and the speed at which it can operate. At §§ 2556.345 through 2556.365, the rule clarifies when a VISTA may present a grievance, what matters are considered grievances, and specific steps for bringing a grievance and appealing a response, while eliminating the inclusion of a grievance examiner in the process. Longstanding experience has shown that CNCS has used its administrative review and oversight to afford complaining parties more than sufficient due process, and has effectively remedied inappropriate conditions leading to grievances, without need of grievance examiner services. When grievance examiner services have been invoked, the time, resources and expense incurred by the VISTA program have substantially outweighed the value provided to the parties involved.

Regulations at 45 CFR part 1216 on non-displacement of employed workers and non-impairment of contracts for service are moved to 45 CFR 2556.150(b) through (e), and the substantive provisions remain unchanged.

Regulations at 45 CFR part 1217 on leaders are moved to 45 CFR part 2556, subpart G, and clarify primary aspects of the leader position in a project.

Regulations at 45 CFR part 1219 on non-competitive eligibility for VISTAs are

moved to 45 CFR 2556.340, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1220 on payment of legal expenses resulting from service activities are moved to 45 CFR 2556.325 through 2556.335, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1222 on participation of project beneficiaries are moved to 45 CFR 2556.120, and their substantive provisions remain unchanged.

Regulations at 45 CFR part 1226 on prohibitions and restrictions on certain political activities are moved to 45 CFR part 2556, subpart H and are revised to complement the current limitations and permitted political activities under the Hatch Act, 5 U.S.C. chapter 73, subchapter III. As provided in the DVSA, VISTAs are subject to the requirements of the Hatch Act because they are considered federal employees for purposes of the Hatch Act, 42 U.S.C. 5055(b)(1).

III. Comments and Responses

On Tuesday, May 5, 2015, CNCS published a notice of proposed rulemaking. 80 FR 25637. We received fewer than 25 comments on the rule, all of which are addressed below.

We received comments from individuals currently serving as VISTAs, current and former VISTA leaders, staff of VISTA sponsors, a state non-profit association and State Commissions on National and Community Service. We appreciate the thoughtful input provided by these individuals and organizations.

Comment: We received comments about our proposal to expand the eligibility to be a VISTA leader to include those who have had prior Peace Corps experience, or have had prior national service experience in AmeriCorps, regardless of whether the prior

experience was through the AmeriCorps VISTA program or another AmeriCorps program.

Response: We appreciate the support commenters expressed for the expansion of eligibility criteria to be a VISTA leader. While two commenters thought that the expansion did not adequately recognize the value of the VISTA experience, the majority of commenters articulated support for the expansion that mirrored our reasons for proposing it: better recruitment opportunities for programs; a wider pool of excellent prospective candidates; and recognition and leveraging of the leadership skills earned through other national service programs. Moreover, in our view, expanding the scope of individuals who may be eligible does not in any way diminish the value placed on the VISTA experience in particular.

Comment: We received several comments on VISTA health care coverage and requests to change the health care coverage options offered to VISTAs serving in the program.

Response: The health care options available to AmeriCorps VISTA members are outlined at <http://www.vistacampus.gov/resources/vista-healthcare-options>. The proposed rule did not propose any changes to VISTA health care coverage and doing so is beyond the scope of this rulemaking.

Comment: We received two comments regarding the Segal AmeriCorps Education Award (Education Award) that suggested changes to the statutory requirements placed on VISTAs regarding their use of the Education Award, namely transferability and use of the Education Award at VA-eligible institutions.

Response: We appreciate the commenters identifying how the Education Award

would be more useful to VISTAs. In accordance with current legislation, individuals who successfully serve in the AmeriCorps State and National program may transfer their Education Awards to certain third party individuals as long as those individuals meet certain statutory conditions. However, VISTAs who receive Education Awards are unable to transfer them to anyone else. Until the legislation changes, we are bound by the statutory requirements on the use of the Education Award by VISTAs. Similarly, until the legislation changes, we are restricted from expanding the use of the Education Award by non-veterans to study at VA-eligible educational institutions.

Accordingly, we have made only technical edits to the proposed rule for clarity in the use of the terms “sponsor,” “project,” and “subrecipient.” Additionally, we clarified the applicability of sections 2556.125 and 2556.130.

IV. Effective Date

This rule is effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].** .

V. Regulatory Procedures

Executive Order 12866

CNCS has determined that the rule is not an “economically significant” rule within the meaning of E.O. 12866 because it is not likely to result in: (1) an annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), CNCS certifies that this rule will not have a significant economic impact on a substantial number of small entities. This 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, CNCS 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.

Unfunded Mandates

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.

Paperwork Reduction Act

This rule addresses the requirement that entities that wish to apply to be VISTA sponsors complete an application to be a VISTA sponsor that manages at least one

VISTA project. Consistent with this requirement is a document: the VISTA program's Project Application (<http://www.nationalservice.gov/programs/ameriCorps/ameriCorps-vista/sponsor-vista-project>). Additionally this rule addresses the requirement that individuals who wish to apply to serve as VISTAs in the federal VISTA program complete an application to serve as a VISTA. This document is called an AmeriCorps Member Application and can be found online at <http://www.nationalservice.gov/programs/ameriCorps/ameriCorps-vista>.

These requirements constitute two sets of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved these information collections for use. The OMB Control Number for the two collections of the Project Application and AmeriCorps Application are 3045-0038 and 3045-0054, respectively.

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information displays valid control numbers. This rule's collections of information are contained in 45 CFR 2556.120 and 2556.205 for the Project Application and AmeriCorps Application, respectively.

This information is necessary to ensure that only eligible and qualified entities serve as VISTA sponsors. This information is also necessary to ensure that only eligible and suitable individuals are approved by the VISTA program to serve as VISTAs in the VISTA program.

The likely respondents to these collections of information are entities interested in or seeking to become VISTA sponsors, current VISTA sponsors, and current and prospective VISTAs.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The rule does not have any Federalism implications, as described above.

List of Subjects

45 CFR Parts 1206, 1210, 1211, 1216 through 1218, 1220, and 1222

Volunteers.

45 CFR Part 1226

Elections, Lobbying, Volunteers.

45 CFR Part 2556

VISTA program, Volunteers,

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapters XII and XXV, title 45 of the Code of Federal Regulations as follows:

PART 1206 – GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

1. The authority citation for part 1206 continues to read as follows:

Authority: 42 U.S.C. 5052.

2. In § 1206.1-1, revise paragraph (a) to read as follows:

§ 1206.1-1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps grants of assistance provided by the Corporation for National and Community Service pursuant to sections of title II of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 413 (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

* * * * *

3. Revise § 1206.1-2 to read as follows:

§ 1206.1-2 Application of this part.

This subpart applies to programs authorized under title II of the DVSA.

4. In § 1206.1-3, revise paragraphs (c) through (f) to read as follows:

§ 1206.1-3 Definitions.

* * * * *

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the appropriate Service Center Director and any Corporation for National and Community Service (CNCS) Headquarters or State office official who is authorized to make the grant or assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1-4, the term “responsible Corporation official” shall

also include a designee of a CNCS official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under title II of the DVSA in the form of grants or contracts involving Federal funds for the administration for which the Director of the National Senior Service Corps programs has responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title II of the DVSA. The term “recipient” does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out the development, conduct and administration of part of a project or program assisted under title II of the DVSA.

* * * * *

5. Revise § 1206.2-1 to read as follows:

§ 1206.2-1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance under title II of the DVSA. The procedures in the subpart do not apply to review of applications for sponsors who receive VISTA members under the DVSA.

6. Revise § 1206.2-3 to read as follows:

§ 1206.2-3 Definitions.

As used in this subpart, “Corporation”, “CEO”, and “recipient” are defined in accordance with § 1206.1-3.

Financial assistance and *assistance* include the services of National Senior Service Corps volunteers supported in whole or in part with CNCS funds under the DVSA.

Program account includes assistance provided by CNCS to support a particular program activity; for example, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

Refunding includes renewal of an application for the assignment of National Senior Service Corps volunteers.

7. In § 1206.2-4, revise paragraph (g) to read as follows:

§ 1206.2-4 Procedures.

* * * * *

(g) If the recipient’s budget period expires prior to the final decision by the deciding official, the recipient’s authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer’s term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer may be similarly extended. No volunteers may be reenrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, CNCS and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

PART 1210 – [REMOVED AND RESERVED]

8. Remove and reserve part 1210.

PART 1211 – [REMOVED AND RESERVED]

9. Remove and reserve part 1211.

**PART 1216 – NONDISPLACEMENT OF EMPLOYED WORKERS AND
NONIMPAIRMENT OF CONTRACTS FOR SERVICE**

10. The authority citation for part 1216 is revised to read as follows:

Authority: 42 U.S.C. 5044(a).

11. Revise § 1216.1-1 to read as follows:

§ 1216.1-1 Purpose.

This part establishes rules to assure that the services of volunteers in the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP), are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of employed workers or impair existing contracts for service. This part implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 (the “Act”).

12. In § 1216.1-2, revise paragraph (a) to read as follows:

§ 1216.1-2 Applicability of this part.

(a) All volunteers in either the Foster Grandparent Program, the Senior Companion Program, or The Retired and Senior Volunteer Program (RSVP), who are assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant

to the Act.

* * * * *

PART 1217 – [REMOVED AND RESERVED]

13. Remove and reserve part 1217.

PART 1218 – [REMOVED AND RESERVED]

14. Remove and reserve part 1218.

PART 1219 – [REMOVED AND RESERVED]

15. Remove and reserve part 1219.

PART 1220 – PAYMENT OF VOLUNTEER LEGAL EXPENSES

16. The authority citation for part 1220 is revised to read as follows:

Authority: 42 U.S.C. 5059.

17. Revise § 1220.1-1 to read as follows:

§ 1220.1-1 Purpose.

This part implements section 419 of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 (the “Act”). This part provides rules to ensure that the Corporation for National and Community Service, which administers the three federal programs, the Foster Grandparent Program (FGP), the Senior Companion Program (SCP), and The Retired and Senior Volunteer Program (RSVP), pays the expenses incurred in judicial and administrative proceedings for the defense of those volunteers serving in those programs. Payment of such expenses by CNCS for those volunteers include payment of counsel fees, court costs, bail or other expenses incidental to the volunteer’s defense.

18. In § 1220.2-1, revise paragraphs (a)(1) and (c) to read as follows:

§ 1220.2-1 Full-time volunteers.

(a)(1) The Corporation for National and Community Service will pay all reasonable expenses for defense of full-time volunteers up to and including the arraignment of Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

* * * * *

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, the Corporation for National and Community Service will not pay for additional private representation for the volunteer.

19. In § 1220.2-2, revise paragraph (a) introductory text, (a)(2), and (b) to read as follows:

§ 1220.2-2 Part-time volunteers.

(a) With respect to a part-time volunteer, the Corporation for National and Community Service will reimburse a sponsor for the reasonable expense it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

* * * * *

(2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under a Corporation

for National and Community Service grant project; and

* * * * *

(b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by the Corporation for National and Community Service may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

20. In § 1220.2-3, revise paragraphs (a), (b), and (d) to read as follows:

§ 1220.2-3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment or bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under § 1220.2-1 or § 1220.2-2, sponsors shall immediately notify the appropriate Corporation for National and Community Service state office or if the state office cannot be reached, the appropriate Area Manager.

(b) Immediately after notification of the appropriate state office, and with the approval thereof, the sponsor shall advance up to \$500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that the Corporation for National and Community Service or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers that is not able to provide the \$500, the Corporation for National and Community Service

state office or Area Manager shall immediately make such sum available to the sponsor.

* * * * *

(d) The General Counsel shall, upon notification by the state office or Area Manager, determine the extent to which the Corporation for National and Community Service will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State offices and Area Managers are not authorized to commit the Corporation for National and Community Service to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided in this section, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

* * * * *

21. In § 1220.3-1, revise the introductory text and paragraph (a) to read as follows:

§ 1220.3-1 Full-time volunteers.

The Corporation for National and Community Service will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

- (a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

* * * * *

22. Revise § 1220.3-2 as follows:

§ 1220.3-2 Part-time volunteers.

The Corporation for National and Community Service will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under the Corporation for National and Community Service grant; and

(c) The conditions specified in § 1220.3-1(b) and (c) are met.

23. Revise § 1220.3-3 as follows:

§ 1220.3-3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making a party to any proceeding covered under § 1220.3-1 or § 1220.3-2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate Corporation for National and Community Service state office. The procedures referred to in § 1220.2-3(c) through (e) shall thereafter be followed as appropriate.

PART 1222 – [REMOVED AND RESERVED]

24. Remove and reserve part 1222.

PART 1226 – PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES

25. The authority citation for part 1226 is revised to read as follows:

Authority: 42 U.S.C. 5043.

26. Revise § 1226.1 to read as follows:

§ 1226.1 Purpose.

This part implements sections 403(a) and (b) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or involvement by certain Corporation for National and Community Service programs and volunteers in electoral and lobbying activities. This part implements those provisions of the Act, as they apply to agency programs and volunteers authorized under title II of the Act.

27. Revise § 1226.2 to read as follows:

§ 1226.2 Scope.

This part applies to all volunteers serving in a program authorized by title II of the Act, including the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP). This part also applies to employees or sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

28. In § 1226.7, revise the introductory text and paragraph (a) to read as follows:

§ 1226.7 Scope.

The provisions in this subpart are applicable to full time volunteers as described in § 1226.3(c), and to such part-time volunteers as may be otherwise specified herein.

Full time volunteers are deemed to be acting in their capacity as volunteers:

- (a) When they are actually engaged in their volunteer assignments; or

* * * * *

§§ 1226.10 and 1226.11 [Removed]

- 29. Remove §§ 1226.10 and 1226.11.

§§ 1226.12 and 1226.13 [Redesignated as §§ 1226.10 and 1226.11]

- 30. Redesignate §§ 1226.12 and 1226.13 as §§ 1226.10 and 1226.11, respectively, and assign them to subpart D.

- 31. Revise newly redesignated § 1226.10 to read as follows:

§ 1226.10 Sponsor employees.

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in § 1226.8 and the exceptions in § 1226.9:

- (a) Whenever they are engaged in an activity which is supported by Corporation for National and Community Service funds; or

- (b) Whenever they identify themselves as acting in their capacity as an official of a project which receives Corporation for National and Community Service funds, or could reasonably be perceived by others as acting in such capacity.

- 32. Add part 2556 to read as follows:

PART 2556—VOLUNTEERS IN SERVICE TO AMERICA

Subpart A – General Information

Sec.

- 2556.1 What is the purpose of the VISTA program?
- 2556.3 Who should read this part?
- 2556.5 What definitions apply in this part?
- 2556.7 Are waivers of the regulations in this part allowed?

Subpart B – VISTA Sponsors

- 2556.100 Which entities are eligible to apply to become VISTA sponsors?
- 2556.105 Which entities are prohibited from being VISTA sponsors?
- 2556.110 What VISTA assistance is available to a sponsor?
- 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?
- 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?
- 2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?
- 2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?
- 2556.135 What is suspension and when may CNCS suspend a VISTA project?
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Subpart A – General Information

AUTHORITY: 42 U.S.C. 4951-4953; 5 CFR part 734.

§ 2556.1 What is the purpose of the VISTA program?

(a) The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems throughout the United States and certain U.S. territories. To effect this purpose, the VISTA program encourages and enables individuals from all walks of life to join VISTA to perform, on a full-time basis, meaningful and constructive service to assist in the solution of poverty and poverty-related problems and secure opportunities for self-advancement of persons afflicted by such problems.

(b) The VISTA program objectives are to:

- (1) Generate private sector resources;
- (2) Encourage volunteer service at the local level;
- (3) Support efforts by local agencies and community organizations to achieve long-term sustainability of projects; and
- (4) Strengthen local agencies and community organizations to carry out the purpose of the VISTA program.

§ 2556.3 Who should read this part?

This part may be of interest to:

- (a) Private nonprofit organizations, public nonprofit organizations, state government agencies, local government agencies, federal agencies, and tribal government agencies who are participating in the VISTA program as sponsors, or who are interested in participating in the VISTA program as sponsors.
- (b) Individuals 18 and older who are serving as a VISTA, or who are interested in serving as a VISTA.

§ 2556.5 What definitions apply in this part?

Act or DVSA means the Domestic Volunteer Service Act of 1973, as amended, Pub.L. 93-113 (42 U.S.C. 4951 et seq.).

Alternative oath or affirmation means a pledge of VISTA service taken by an individual who legally resides within a State, but who is not a citizen or national of the United States, upon that individual's enrollment into the VISTA program as a VISTA.

Applicant for VISTA service means an individual who is in the process of completing, or has completed, an application for VISTA service as prescribed by CNCS, but who has not been approved by CNCS to be a candidate.

Application for VISTA service means the materials prescribed by CNCS to ascertain information on an individual's eligibility and suitability for VISTA service.

Area Manager means a CNCS official who is head of a designated, regional set, or cluster of CNCS State Offices, or equivalent CNCS official.

Assistance means VISTAs, leaders, or summer associates. "Assistance" also means technical assistance or training of VISTAs, leaders, summer associates, candidates, sponsors, or supervisors that are provided from funds appropriated by Congress for the purpose of supporting activities under the DVSA. "Assistance" also means grant funds.

Candidate, when used in the context of an individual who has applied for VISTA service, means an individual whose application for VISTA service has been approved by CNCS, but who has not taken an oath, alternative oath or affirmation to serve in the VISTA program. Candidates may include those who were enrolled in the VISTA program at a prior time.

Cost share means when an entity, such as a VISTA sponsor, reimburses CNCS part or all of the expenses associated with the operation of a VISTA project, such as the costs for one or more VISTAs, leaders, or summer associates placed in a VISTA project.

CNCS means the Corporation for National and Community Service, established pursuant to section 191 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12651. CNCS is also sometimes referred to as "the Corporation."

Education award or Segal AmeriCorps Education Award means an end-of-service monetary benefit from CNCS's National Service Trust that is directed to designated educational institutions and is awarded to certain qualifying VISTAs who successfully

complete an established term of VISTA service.

Enroll, enrolled, or enrollment, when used in the context of VISTA service, refers to the status of an individual admitted to serve in the VISTA program. The enrollment period commences when the Oath to serve in the VISTA program is taken by the candidate and ends upon termination from a term of service in the VISTA program. The enrollment period may commence on a date earlier than the first day of a service assignment of an enrolled VISTA member.

Full-time, when used in the context of VISTA service means service in which a VISTA, leader, or summer associate remains available for service without regard to regular working hours.

Leader, a leader, or a VISTA leader means a VISTA member who is enrolled for full-time VISTA service, and who is also subject to the terms of subpart G of this part.

Living allowance or living allowance payment means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

Memorandum of Agreement means a written agreement between CNCS and a sponsor regarding the terms of the sponsor's involvement and responsibilities in the VISTA program.

Nonpartisan election means:

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a

municipal ordinance, or any question or issue of a similar character.

Oath means an avowal to VISTA service, taken in accordance with 5 U.S.C. 3331, by an individual who is a U.S. citizen or national. The taking of the Oath effects an individual's enrollment into the VISTA program.

On-duty or during service time means when a VISTA is either performing VISTA service or scheduled to do so.

Project or VISTA project means a set of VISTA activities operated and overseen by, and the responsibility of, a sponsor, and assisted under this Part to realize the goals of title I of the DVSA.

Project applicant or VISTA project applicant means an entity that submits an application to CNCS to operate, oversee, and be responsible for a VISTA project.

Project application or VISTA project application means the application materials prescribed by CNCS to ascertain information on an applying entity's eligibility and suitability to operate, oversee, and be responsible for, a VISTA project.

Project director or VISTA project director means a staff person, of legal age, of the sponsor, who has been assigned by the sponsor the overall responsibility for the management of the VISTA project.

Sponsor, VISTA sponsor, or VISTA project sponsor means a public agency or private non-profit organization that receives assistance under title I of the DVSA, and is responsible for operating and overseeing a VISTA project. A public agency may be a federal, state, local or tribal government.

State, when used as a noun, means one of the several states in the United States of America, District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, and

the Commonwealth of the Northern Mariana Islands.

State Program Director means a CNCS official who reports to an Area Manager or equivalent CNCS official, and who is the head of a CNCS State Office.

Stipend or end-of-service stipend means an end-of-service lump-sum monetary benefit from CNCS that is awarded to certain qualifying VISTAs, who successfully complete an established term of VISTA service.

Subrecipient means a public agency or private non-profit organization that enters into an agreement with a VISTA sponsor to receive one or more VISTAs, and to carry out a set of activities, assisted under this Part, to realize the goals of title I of the DVSA. A public agency may be a federal, state, local or tribal government.

Summer associate means a VISTA member who is enrolled for VISTA service, during a period between May 1 and September 15, and who is also subject to the terms of subpart H of this part. A summer associate must be available to provide continuous full-time service for a period of at least eight weeks and a maximum of ten weeks.

Supervisor or VISTA Supervisor means a staff member, of legal age, of the sponsor or a subrecipient, who has been assigned by the sponsor or the subrecipient, the responsibility for the day-to-day oversight of one or more VISTAs.

Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.

VISTA member, a VISTA, or the VISTA means an individual enrolled full-time

for VISTA service in the VISTA program, as authorized under title I of the DVSA.

VISTA program means the Federal government program named Volunteers in Service to America and authorized under title I of the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 et seq.

VISTA service means VISTA service activities performed by a VISTA member while enrolled in the VISTA program.

§ 2556.7 Are waivers of the regulations in this part allowed?

Upon a determination of good cause, the Chief Executive Officer of CNCS may, subject to statutory limitations, waive any provisions of this part.

Subpart B –VISTA Sponsors

AUTHORITY: 42 U.S.C. 4953(a), (f), 4954(b), (e), 4955(b), 4956, 5043(a)-(c), 5044(a)-(c), (e), 5046, 5052, 5056, and 5057; 42 U.S.C. 12651b (g)(10); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 2156.

§ 2556.100 Which entities are eligible to apply to become VISTA sponsors?

The following entities are eligible to apply to become VISTA sponsors, and thereby undertake projects in the U.S. and certain U.S. territories:

- (a) Private nonprofit organization.
- (b) Public nonprofit organization.
- (c) State government or state government agency.
- (d) Local government or local government agency.
- (e) Tribal government or tribal government agency.

§ 2556.105 Which entities are prohibited from being VISTA sponsors?

- (a) An entity is prohibited from being a VISTA sponsor or from otherwise

receiving VISTA assistance if a principal purpose or activity of the entity includes any of the following:

(1) Electoral activities. Any activity designed to influence the outcome of elections to any public office, such as actively campaigning for or against, or supporting, candidates for public office; raising, soliciting, or collecting funds for candidates for public office; or preparing, distributing, providing funds for campaign literature for candidates, including leaflets, pamphlets, and material designed for the print or electronic media.

(2) Voter registration activities. Any voter registration activity, such as providing transportation of individuals to voter registration sites; providing assistance to individuals in the process of registering to vote, including determinations of eligibility; or disseminating official voter registration material.

(3) Transportation to the polls. Providing voters or prospective voters with transportation to the polls or raising, soliciting, or collecting funds for such activities.

(b) Any organization that, subsequent to the receipt of VISTA assistance, makes as one of its principal purposes or activities any of the activities described in paragraph (a) of this section shall be subject to the procedures in §§ 2556.125 through 2556.145.

§ 2556.110 What VISTA assistance is available to a sponsor?

(a) A sponsor may be approved for one or more VISTA positions.

(b) A sponsor, upon review and approval by CNCS to establish a leader position or positions, and in accordance with criteria set forth at subpart G of this part, may be approved for one or more leader positions.

(c) A sponsor, upon approval by CNCS to establish a summer associate position

or positions, and in accordance with criteria set forth at subpart F of this part, may be approved for one or more summer associate positions.

(d) A sponsor may be eligible to receive certain grant assistance under the terms determined and prescribed by CNCS.

(e) A sponsor may receive training and technical assistance related to carrying out purposes of title I of the DVSA.

§ 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?

(a) A sponsor is not required to provide a cash match for any of the assistance listed in § 2556.110.

(b) A sponsor must provide supervision, work space, service-related transportation, and any other materials necessary to operate and complete the VISTA project and support the VISTA.

§ 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?

(a) To the maximum extent practicable, the people of the communities to be served by VISTA members shall participate in planning, developing, and implementing programs.

(b) The sponsor shall articulate in its project application how it will engage or continue to engage relevant communities in the development and implementation of programs.

§ 2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?

(a) CNCS may deny or reduce VISTA assistance where a denial or reduction is

based on:

- (1) Legislative requirement;
- (2) Availability of funding;
- (3) Failure to comply with applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement;
- (4) Ineffective management of CNCS resources;
- (5) (5) Substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or applicable Memorandum of Agreement; or
- (6) General policy.

(b) In instances where the basis for denial or reduction of VISTA assistance may also be the basis for the suspension or termination of a VISTA project under this subpart, CNCS shall not be limited to the use of this section to the exclusion of the procedures for suspension or termination in this subpart.

§ 2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?

(a) CNCS shall notify the sponsor in writing, at least 75 calendar days before the anticipated denial or reduction of VISTA assistance, that CNCS proposes to deny or reduce VISTA assistance. CNCS's written notice shall state the reasons for the decision to deny or reduce assistance and shall provide an opportunity period for the sponsor to respond to the merits of the proposed decision. CNCS retains sole authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(b) Where CNCS's notice of proposed decision is based upon a specific charge of the sponsor's failure to comply with the applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement, the notice shall offer the sponsor an opportunity period to respond in writing to the notice, with any affidavits or other supporting documentation, and to request an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such a hearing officer shall be limited to conducting the hearing and offering recommendations to CNCS. Regardless of whether or not an informal hearing takes place, CNCS shall retain full authority to make the final determination whether the VISTA assistance is denied or reduced, as appropriate.

(c) If the recipient requests an informal hearing, in accordance with paragraph (b) of this section, such hearing shall be held at a date specified by CNCS and held at a location convenient to the sponsor.

(d) If CNCS's proposed decision is based on ineffective management of resources, or on the substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or an applicable Memorandum of Agreement, CNCS shall inform the sponsor in the notice of proposed decision of the opportunity to show cause why VISTA assistance should not be denied or reduced, as appropriate. CNCS shall retain full authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(e) The recipient shall be informed of CNCS's final determination on whether the VISTA assistance at issue shall be denied or reduced, and the basis for the determination.

(f) The procedure in this section does not apply to a denial or reduction of VISTA

assistance based on legislative requirements, availability of funding, or on general policy.

§ 2556.135 What is suspension and when may CNCS suspend a VISTA project?

(a) Suspension is any action by CNCS temporarily suspending or curtailing assistance, in whole or in part, to all or any part of a VISTA project, prior to the time that the project term is concluded. Suspension does not include the denial or reduction of new or additional VISTA assistance.

(b) In an emergency situation for up to 30 consecutive days, CNCS may suspend assistance to a sponsor, in whole or in part, for the sponsor's material failure or threatened material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement. Such suspension in an emergency situation shall be pursuant to notice and opportunity to show cause why assistance should not be suspended.

(c) To initiate suspension proceedings, CNCS shall notify the sponsor in writing that CNCS is suspending assistance in whole or in part. The written notice shall contain the following:

(1) The grounds for the suspension and the effective date of the commencement of the suspension;

(2) The sponsor's right to submit written material in response to the suspension to show why the VISTA assistance should not be suspended, or should be reinstated, as appropriate; and

(3) The opportunity to adequately correct the deficiency, or deficiencies, which led to CNCS's notice of suspension.

(d) In deciding whether to continue or lift the suspension, as appropriate, CNCS shall consider any timely material presented in writing, any material presented during the course of any informal meeting, as well as any showing that the sponsor has adequately corrected the deficiency which led to the initiation of suspension.

(e) During the period of suspension of a sponsor, no new expenditures, if applicable, shall be made by the sponsor's VISTA project at issue and no new obligations shall be incurred in connection with the VISTA project at issue except as specifically authorized in writing by CNCS.

(f) CNCS may, in its discretion, modify the terms, conditions, and nature of the suspension or rescind the suspension action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency or deficiencies which led to the suspension and that repetition is not foreseeable.

§ 2556.140 What is termination and when may CNCS terminate a VISTA project?

(a) Termination means any action by CNCS permanently terminating or curtailing assistance to all or any part of a sponsor's VISTA project prior to the time that the project term is concluded.

(b) CNCS may terminate assistance to a sponsor in whole or in part for the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement.

(c) To initiate termination proceedings, CNCS shall notify the sponsor in writing that CNCS is proposing to terminate assistance in whole or in part. The written notice shall contain the following:

(1) A description of the VISTA assistance proposed for termination, the grounds that warrant such proposed termination, and the proposed date of effective termination;

(2) Instructions regarding the sponsor's opportunity, within 21 calendar days from the date of issuance of the notice, to respond in writing to the merits of the proposed termination and instructions regarding the sponsor's right to request a full and fair hearing before a mutually agreed-upon impartial hearing officer; and

(3) Invitation of voluntary action by the sponsor to adequately correct the deficiency or deficiencies which led to CNCS's notice of proposed termination.

(d) In deciding whether to effect termination of VISTA assistance, CNCS shall consider any relevant, timely material presented in writing; any relevant material presented during the course of any full and fair hearing; as well as, any showing that the sponsor has adequately corrected the deficiency which led to the initiation of termination proceedings.

(e) Regardless of whether or not a full and fair hearing takes place, CNCS shall retain all authority to make the final determination as to whether the termination of VISTA assistance is appropriate.

(f) The sponsor shall be informed of CNCS's final determination on the proposed termination of VISTA assistance, and the basis or bases for the determination.

(g) CNCS may, in its discretion, modify the terms, conditions, and nature of a termination action or rescind a termination action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency which led to the termination, or the initiation of termination proceedings, and that repetition is not threatened.

§ 2556.145 May CNCS pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this subpart?

The procedures established by this subpart shall not preclude CNCS from pursuing any other remedies authorized by law.

§ 2556.150 What activities are VISTA members not permitted to perform as part of service?

(a) A VISTA may not perform any activities in the project application that do not correspond with the purpose of the VISTA program, as described in § 2556.1, or that the Director has otherwise prohibited.

(b) A VISTA may not perform services or duties as a VISTA member that would otherwise be performed by employed workers or other volunteers (not including participants under the DVSA and the National and Community Service Act of 1990, as amended).

(c) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, that supplant the hiring of or result in the displacement of employed workers or other volunteers (not including participants under the DVSA or the National and Community Service Act of 1990, as amended).

(d) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, which impair existing contracts for service.

(e) The requirements of paragraphs (b) through (d) of this section do not apply when the sponsor requires the service in order to avoid or relieve suffering threatened by, or resulting from, a disaster, civil disturbance, terrorism, or war.

(f) A sponsor or subrecipient shall not request or receive any compensation from a VISTA; from a beneficiary of VISTA project services; or any other source for services of a VISTA.

§ 2556.155 May a sponsor manage a VISTA project through a subrecipient?

(a) A sponsor may carry out a VISTA project through one or more subrecipients that meet the eligibility criteria of § 2556.100.

(b) The sponsor must enter into a subrecipient agreement with each subrecipient.

A subrecipient agreement must have at least the following elements:

(1) A project plan to be implemented by the subrecipient;

(2) Records to be kept and reports to be submitted;

(3) Responsibilities of the parties and other program requirements; and

(4) Suspension and termination policies and procedures.

(c) The sponsor retains the responsibility for compliance with a Memorandum of Agreement; the applicable regulations in this Part; and all applicable policies, procedures, and guidance issued by CNCS regarding the VISTA program.

(d) A sponsor shall not request or receive any compensation from a subrecipient for services performed by a VISTA.

(e) A sponsor shall not receive payment from, or on behalf of, the subrecipient for costs of the VISTA assistance, except in two limited circumstances:

(1) For reasonable and actual costs incurred by the sponsor directly related to the subrecipient's participation in a VISTA project; and

(2) For any cost share related to a VISTA placed with the subrecipient in the VISTA project.

§ 2556.160 What are the sponsor's requirements for cost share projects?

(a) A sponsor shall enter into a written agreement for cost share as prescribed by CNCS.

(b) A sponsor shall make timely cost share payments as prescribed by CNCS and applicable federal law and regulations.

(c) In addition to other sources of funds, a sponsor may use funds from federal, state, or local government agencies, provided the requirements of those agencies and their programs are met.

(d) Subject to review and approval by CNCS, CNCS may enter into an agreement with another entity to receive and utilize funds to make cost share payments on behalf of the sponsor.

§ 2556.165 What Fair Labor Standards apply to VISTA sponsors and subrecipients?

All sponsors and subrecipients that employ laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

§ 2556.170 What nondiscrimination requirements apply to sponsors and subrecipients?

(a) An individual with responsibility for the operation of a project that receives CNCS assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or staff member, or on the basis of disability, if the participant or staff

member is a qualified individual with a disability.

(b) Any CNCS assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) An individual with responsibility for the operation of a project that receives CNCS assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with CNCS funds. This provision does not apply to the employment (with CNCS assistance) of any staff member of a CNCS-supported project who was employed with the organization operating the project on the date the CNCS assistance was awarded.

(d) Sponsors 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. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of race, color, national origin, gender, age, religion, or political affiliation. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a

subrecipient, shall discriminate against a VISTA on the basis of disability, if the VISTA is a qualified individual with a disability.

§ 2556.175 What limitations are VISTA sponsors subject to regarding religious activities?

(a) A VISTA shall not give religious instruction, conduct worship services or engage in any form of proselytizing as part of his or her duties.

(b) A sponsor or subrecipient may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use any CNCS assistance, including the services of any VISTA or VISTA assistance, to support any inherently religious activities, such as worship, religious instruction, or proselytizing, as part of the programs or services assisted by the VISTA program. If a VISTA sponsor or subrecipient conducts such inherently religious activities, the activities must be offered separately, in time or location, from the programs or services assisted under this Part by the VISTA program.

Subpart C – VISTA Members

AUTHORITY: 42 U.S.C. 4953(b)(3), (f), 4954(a)-(c), 5044(e).

§ 2556.200 Who may apply to serve as a VISTA?

An individual may apply to serve as a VISTA if all the following requirements are met:

(a) The individual is at least eighteen years of age upon taking an oath or affirmation, as appropriate, to enter VISTA service. There is no upper age limit.

(b) The individual is a United States citizen or national, or is legally residing within a state. For eligibility purposes, a lawful permanent resident alien is considered to

be an individual who is legally residing within a state.

§ 2556.205 What commitments and agreements must an individual make to serve in the VISTA program?

(a) To the maximum extent practicable, the individual must make a full-time commitment to remain available for service without regard to regular working hours, at all times during his or her period of service, except for authorized periods of leave.

(b) To the maximum extent practicable, the individual must make a full-time personal commitment to alleviate poverty and poverty-related problems, and to live among and at the economic level of the low-income people served by the project.

(c) The individual's service cannot be used to satisfy service requirements of parole, probation, or community service prescribed by the criminal justice system.

(d) A VISTA candidate or member agrees to undergo an investigation into his or her criminal history or background as a condition of enrollment, or continued enrollment, in the VISTA program.

§ 2556.210 Who reviews and approves an application for VISTA service?

CNCS has the final authority to approve or deny VISTA applications for VISTA service.

Subpart D – Terms, Protections, and Benefits of VISTA Members

AUTHORITY: 42 U.S.C. 4954(a), (b), (d), 4955, 5044(e), 5055, and 5059; 42 U.S.C. 12602(c).

§ 2556.300 Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?

(a) Except for the purposes listed here, a VISTA is not considered an employee

of the Federal Government. A VISTA is considered a Federal employee only for the following purposes:

- (1) Federal Tort Claims Act – 28 U.S.C. 1346(b); 28 U.S.C. 2671-2680;
- (2) Federal Employees' Compensation Act – 5 U.S.C. chapter 81, subchapter 1;
- (3) Hatch Act – 5 U.S.C. chapter 73, subchapter III;
- (4) Internal Revenue Service Code – 26 U.S.C. 1 et seq.; and
- (5) Title II of the Social Security Act – 42 U.S.C. 401 et seq.

(b) A VISTA is not considered a federal employee for any purposes other than those set forth in paragraph (a) of this section.

(c) A VISTA is not covered by Federal or state unemployment compensation related to their enrollment or service in the VISTA program. A VISTA's service is not considered employment for purposes of eligibility for, or receipt of, federal, state, or any other unemployment compensation.

(d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as Federal income tax and Social Security.

(e) A VISTA is not, under any circumstances, considered an employee of the sponsor or subrecipient to which he or she is assigned to serve. No VISTA is in an employment relationship with the sponsor or subrecipient to which he or she is assigned. The sponsor is not authorized to make contributions to any state unemployment compensation fund on a VISTA's behalf.

§ 2556.305 What is the duration and scope of service for a VISTA?

(a) To serve as a VISTA, an individual makes a full-time commitment for a minimum of one year, without regard to regular working hours.

(b) A VISTA carries out activities in accordance with the purpose of the VISTA program, as described in § 2556.1.

(c) To the maximum extent practicable, the VISTA shall live among and at the economic level of the low-income community served by the project, and actively seek opportunities to engage with that low-income community without regard to regular work hours.

(d) A VISTA carries out service activities in conformance with the sponsor's approved project application, including any description of a VISTA assignment as contained in the project application; and, in conformance with the purpose of title I of the DVSA. In any case where there is a conflict between the project application and the DVSA, the DVSA takes precedence.

(e) Under no circumstances may an individual be enrolled to serve as a VISTA beyond five years.

§ 2556.310 What are the lines of supervision or oversight of a VISTA, a VISTA sponsor, and CNCS during a VISTA's term of service?

(a) The VISTA sponsor is responsible for the day-to-day supervision and oversight of the VISTA.

(b) CNCS is responsible for ongoing monitoring and oversight of the VISTA sponsor's project where the VISTA is assigned. CNCS is responsible for selecting the VISTA, assigning the VISTA to a project, removal of a VISTA from a project, and VISTA separation actions such as termination from the VISTA program.

§ 2556.315 What are terms and conditions for official travel for a VISTA?

(a) CNCS may provide official travel for a VISTA candidate or a VISTA, as appropriate, to attend CNCS-directed activities, such as pre-service training, placement at the project site, in-service training events, and return from the project site to home of record.

(b) CNCS must approve all official travel of a VISTA candidate or a VISTA, including the mode of travel.

(c) CNCS may provide for official emergency travel for a VISTA in case of a natural disaster or the critical illness or death of an immediate family member.

§ 2556.320 What benefits may a VISTA receive during VISTA service?

(a) A VISTA receives a living allowance computed on a daily rate. Living allowances vary according to the local cost-of-living in the project area where the VISTA is assigned.

(b) Subject to a maximum amount, and at the discretion and upon approval of CNCS, a VISTA may receive payment for settling-in expenses, as determined by CNCS.

(c) Subject to a maximum amount, and at the discretion of CNCS, in the event of an emergency (such as theft, fire loss, or special clothing necessitated by severe climate), a VISTA may receive an emergency expense payment in order to resume VISTA service activities, as determined and approved by CNCS.

(d) Subject to a maximum amount, and at the discretion of CNCS, a VISTA may receive a baggage allowance for the actual costs of transporting personal effects to the project site to which the VISTA is assigned to serve, as determined by CNCS.

(e) To the extent eligible, a VISTA may receive health care through a health

benefits program provided by CNCS.

(f) To the extent eligible, a VISTA may receive child care support through a child care program provided by CNCS.

(g) To the extent eligible, a VISTA may elect to receive a Segal AmeriCorps Education Award, and upon successful completion of service, receive that award in an amount prescribed by CNCS, in accordance with the applicable provisions of 45 CFR parts 2526, 2527, and 2528.

(1) A VISTA is eligible to elect to receive a Segal AmeriCorps Education Award if he or she is a citizen, national, or lawful permanent resident alien of the United States.

(2) A VISTA who elects a Segal AmeriCorps Education Award is eligible to request forbearance of a student loan from his or her loan-holder. A VISTA who elects a Segal AmeriCorps Education Award may, upon successful completion of service, be eligible to receive up to 100 percent of the interest accrued on a qualified student loan, consistent with the applicable provisions of 45 CFR part 2529.

(3) A VISTA is not eligible to receive more than an amount equal to the aggregate value of two full-time Segal AmeriCorps Education Awards in his or her lifetime.

(4) Other than for a summer associate, the amount of a Segal AmeriCorps Education Award for the successful completion of a VISTA term of service is equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the fiscal year in which the VISTA has enrolled in the VISTA program.

(h) A VISTA who does not elect to receive a Segal AmeriCorps Education Award, upon successful completion of service, receives an end-of-service stipend in an

amount prescribed by CNCS.

(i) In the event that a VISTA does not successfully complete a full term of service, a VISTA shall not receive a pro-rated Segal AmeriCorps Education Award or a pro-rated end-of-service stipend, except in cases where the appropriate State Program Director determines the VISTA did not successfully complete a full term of service because of a compelling, personal circumstance. Examples of a compelling, personal circumstance are: serious medical condition or disability of a VISTA during VISTA service; critical illness or disability of a VISTA's immediate family member (spouse, domestic partner, parent, sibling, child, or guardian) if this event makes completing a term of service unreasonably difficult; or unusual conditions not attributable to the VISTA, such as natural disaster, strike, or premature closing of a project, that make completing a term unreasonably difficult or infeasible.

(j) In the event of a VISTA's death during service, his or her family or others that he or she named as beneficiary in accordance with section 5582 of title 5, United States Code, shall be paid a pro-rated end-of-service stipend for the period during which the VISTA served. If the VISTA had elected to receive the Segal AmeriCorps Education Award for successful completion of a full term of VISTA service, prior to payment to the named beneficiary, CNCS shall convert that election to an end-of-service stipend and pay the VISTA's family, or others that he or she named as beneficiary, a pro-rated end-of-service stipend accordingly.

§ 2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?

Under certain circumstances, as set forth in §§ 2556.330 through 2556.335,

CNCS may pay reasonable legal defense expenses incurred in judicial or administrative proceedings for the defense of a VISTA serving in the VISTA program. Such covered legal expenses consist of counsel fees, court costs, bail, and other expenses incidental to a VISTA's legal defense.

§ 2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?

(a) For the legal defense of a VISTA member who is charged with a criminal offense related to the VISTA member's service, up to and including arraignment in Federal, state, and local criminal proceedings, CNCS may pay actual and reasonable legal expenses. CNCS is not required to pay any expenses for the legal defense of a VISTA member where he or she is charged with a criminal offense arising from alleged activity or action that is unrelated to that VISTA's service.

(b) A VISTA member's service is clearly unrelated to a charged offense:

(1) When the activity or action is alleged to have occurred prior to the VISTA member's VISTA service.

(2) When the VISTA member is not at his or her assigned project location, such as during periods of approved leave, medical leave, emergency leave, or in administrative hold status in the VISTA program.

(3) When the activity or action is alleged to have occurred at or near his or her assigned project, but is clearly not part of, or required by, the VISTA member's service assignment.

(c) For the legal defense, beyond arraignment in Federal, state, and local criminal proceedings, of a VISTA member who is charged with a criminal offense, CNCS may

also pay actual and reasonable legal expenses:

- (1) When the charged offense against the VISTA member relates exclusively to his or her VISTA assignment or status as a VISTA member;
- (2) When the charge offense against the VISTA member arises from an alleged activity or action that is a part of, or required by, the VISTA member's VISTA assignment;
- (3) When the VISTA member has not admitted a willful or knowing violation of law; or
- (4) When the charged offense against the VISTA member is not a minor offense or misdemeanor, such as a minor vehicle violation.

(d) Notwithstanding paragraphs (a) through (c) of this section, there may be situations in which the criminal proceedings at issue arise from a matter that also gives rise to a civil claim under the Federal Tort Claims Act. In such a situation, the U.S. Department of Justice may, on behalf of the United States, agree to defend the VISTA. If the U.S. Department of Justice agrees to defend the VISTA member, unless there is a conflict between the VISTA member's interest and that of the United States, CNCS will not pay for expenses associated with any additional legal representation (such as counsel fees for private counsel) for the VISTA member.

§ 2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?

For the legal defense in Federal, state, and local civil judicial and administrative proceedings of a VISTA member, CNCS may also pay actual and reasonable legal expenses, where:

(a) The complaint or charge is against the VISTA, and is directly related to his or her VISTA service and not to his or her personal activities or obligations;

(b) The VISTA has not admitted to willfully or knowingly pursuing a course of conduct that would result in the plaintiff or complainant initiating such a proceeding; and

(c) The judgment sought involves a monetary award that exceeds \$1,000.

§ 2556.340 What is non-competitive eligibility and who is eligible for it?

(a) Non-competitive eligibility is a status attained by an individual such that the individual is eligible for appointment by a Federal agency in the Executive branch, into a civil service position in the federal competitive service, in accordance with 5 CFR 315.605.

(b) An individual who successfully completes at least a year-long term of service as a VISTA, and who has not been terminated for cause from the VISTA program at any time, retains non-competitive eligibility status for one year following the end of the term of service as a VISTA.

(c) In addition to the retention of the one year of non-competitive eligibility status as provided in paragraph (b) of this section, an individual's non-competitive eligibility status may extend for two more years to a total of three years if the individual is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the view of the federal agency referenced in paragraph (a) of this section, warrants extension.

§ 2556.345 Who may present a grievance?

(a) Under the VISTA program grievance procedure, a grievance may be presented by any individual who is currently enrolled as a VISTA in the VISTA program or who was enrolled as a VISTA in the VISTA program within the past 30 calendar days.

(b) A VISTA's grievance shall not be construed as reflecting on the VISTA's standing, performance, or desirability as a VISTA.

(c) A VISTA who presents a grievance shall not be subjected to restraint, interference, coercion, discrimination, or reprisal because of presentation of views.

§ 2556.350 What matters are considered grievances?

(a) Under the VISTA program grievance procedure, grievances are matters of concern, brought by a VISTA, that arise out of, and directly affect, the VISTA's service situation or that arise out of a violation of a policy, practice, or regulation governing the terms or conditions of the VISTA's service, such that the violation results in the denial or infringement of a right or benefit to the VISTA member.

(b) Matters not within the definition of a grievance as defined in paragraph (a) of this section are not grievable, and therefore, are excluded from the VISTA program grievance procedure. Though not exhaustive, examples of matters excluded from the VISTA program grievance procedure are:

(1) Those matters related to a sponsor's or project's continuance or discontinuance; the number of VISTAs assigned to a VISTA project; the increases or decreases in the level of support provided to a VISTA project; the suspension or termination of a VISTA project; or the selection or retention of VISTA project staff.

(2) Those matters for which a separate administrative procedure or complaint process is provided, such as early termination for cause, claims of discrimination during

service, and federal worker's compensation claims filed for illness or injury sustained in the course of carrying out VISTA activities.

(3) Those matters related to any law, published rule, regulation, policy, or procedure.

(4) Those matters related to housing during a VISTA member's service.

(5) Those matters which are, by law, subject to final administrative review outside CNCS.

(6) Those matters related to actions taken, or not taken, by a VISTA sponsor or subrecipient, or CNCS, in compliance with or in order to fulfill the terms of a contract, grant, or other agreement related to the VISTA program.

(7) Those matters related to the internal management of CNCS, unless such matters are shown to specifically and directly affect the VISTA's service situation or terms or conditions of his or her VISTA service.

§ 2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?

(a) A VISTA is entitled to review any material in his or her official VISTA file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of materials that may be withheld include references obtained under pledge of confidentiality, official VISTA files of other VISTAs, and privileged intra-agency documents.

(b) A VISTA may review relevant materials in the possession of a sponsor to the extent such materials are disclosable by the sponsor under applicable freedom of information act and privacy laws.

§ 2556.360 How may a VISTA bring a grievance?

(a) Bringing a grievance - Step 1. (1) While currently enrolled in the VISTA program, or enrolled in the VISTA program within the past 30 calendar days, a VISTA may bring a grievance to the sponsor or subrecipient where he or she is assigned to serve within 15 calendar days that the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. If the grievance arises out of a continuing condition or practice that individually affects a VISTA, while enrolled the VISTA may bring it at any time while he or she is affected by a continuing condition or practice.

(2) A VISTA brings a grievance by presenting it in writing to the executive director, or comparable individual, of the sponsoring organization where the VISTA is assigned, or to the sponsor's representative who is designated to receive grievances from a VISTA.

(3) The sponsor shall review and respond in writing to the VISTA's grievance, within 10 calendar days of receipt of the written grievance. The sponsor may not fail to respond to a complaint raised by a VISTA on the basis that it is not an actual grievance, or that it is excluded from coverage as a grievance, but may, in the written response, dismiss the complaint and refuse to grant the relief requested on either of those grounds.

(4) If the grievance brought by a VISTA involves a matter over which the sponsor has no substantial control or if the sponsor's representative is the supervisor of the VISTA, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and present the grievance in writing directly to the State Program Director, as described in paragraph (b) of this section.

(b) Bringing a grievance - Step 2. (1) If, after a VISTA brings a grievance as set forth in paragraphs (a)(1) and (2) of this section, the matter is not resolved, he or she may submit the grievance in writing to the appropriate State Program Director. The VISTA must submit the grievance to the State Program Director either:

(i) Within seven calendar days of receipt of the response of the sponsor; or,

(ii) In the event the sponsor has not issued a response to the VISTA within 10 calendar days of receipt of the written grievance, within 17 calendar days.

(2) If the grievance involves a matter over which either the sponsor or subrecipient has no substantial control or if the sponsor's representative is the supervisor of the VISTA, as described in paragraph (a)(4) of this section, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and submit the grievance in writing directly to the State Program Director. In such a case, the VISTA must submit the grievance to the State Program Director within 15 calendar days of the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event.

(3) Within ten working days of receipt of the grievance, the State Program Director shall respond in writing, regardless of whether or not the matter constitutes a grievance as defined under this grievance procedure, and/or is timely submitted. In the response, the State Program Director may determine that the matter submitted as a grievance is not grievable, is not considered a grievance, or fails to meet the time limit for response. If the State Program Director makes any such determination, he or she may dismiss the complaint, setting forth the reason(s) for the dismissal. In such a case, the State Program Director need not address the complaint on the merits, nor make a

determination of the complaint on the merits.

§ 2556.365 May a VISTA appeal a grievance?

(a) The VISTA may appeal in writing to the appropriate Area Manager the response of the State Program Director to the grievance, as set forth in § 2556.360(b)(3). To be eligible to appeal a grievance response to the Area Manager, the VISTA must have exhausted all appropriate actions as set forth in § 2556.360.

(b) A VISTA's grievance appeal must be in writing and contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the VISTA.

(c) The VISTA must submit a grievance appeal to the appropriate Area Manager no later than 10 calendar days after the State Program Director issues his or her response to the grievance.

(d) Certain matters contained in a grievance appeal may be rejected, rather than denied on the merits, by the Area Manager. A grievance appeal may be rejected, in whole or in part, for any of the following reasons:

(1) The grievance appeal was not submitted to the appropriate Area Manager within the time limit specified in paragraph (c) of this section;

(2) The grievance appeal consists of matters not contained within the definition of a grievance, as specified in section § 2556.350(a);

(3) The grievance appeal consists of matters excluded from the VISTA program grievance procedure, as specified in § 2556.350(b); or

(4) The grievance appeal contains matters that are moot, or for which relief has otherwise been granted.

(e) Within 14 calendar days of receipt of the grievance, the appropriate Area Manager shall decide the grievance appeal on the merits, or reject the grievance appeal in whole or in part, or both, as appropriate. The Area Manager shall notify the VISTA in writing of the decision and specify the grounds for the appeal decision. The appeal decision shall include a statement of the basis for the decision and is a final decision of CNCS.

Subpart E – Termination for Cause Procedures

AUTHORITY: 42 U.S.C. 4953(b), (c), (f), and 5044(e).

§ 2556.400 What is termination for cause and what are the criteria for termination for cause?

(a) Termination for cause is discharge of a VISTA from the VISTA program due to a deficiency, or deficiencies, in conduct or performance.

(b) CNCS may terminate for cause a VISTA for any of the following reasons:

(1) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(2) Violation of any provision of the Domestic Service Volunteer Act of 1973, as amended, or any CNCS or VISTA program policy, regulation, or instruction;

(3) Failure, refusal, or inability to perform prescribed project duties as outlined in the project plan, assignment description, or as directed by the sponsor to which the VISTA is assigned;

(4) Involvement in activities which substantially interfere with the VISTA's performance of project duties;

(5) Intentional false statement, misrepresentation, omission, fraud, or deception

in seeking to obtain selection as a VISTA in the VISTA program;

(6) Any conduct on the part of the VISTA which substantially diminishes his or her effectiveness as a VISTA; or

(7) Unsatisfactory performance of an assignment.

§ 2556.405 Who has sole authority to remove a VISTA from a VISTA project and who has sole authority to terminate a VISTA from the VISTA program?

(a) CNCS has the sole authority to remove a VISTA from a project where he or she has been assigned.

(b) CNCS has the sole authority to terminate for cause, or otherwise terminate, a VISTA from the VISTA program.

(c) Neither the sponsoring organization nor any of its subrecipients has the authority to remove a VISTA from a project or to terminate a VISTA for cause, or for any other basis, from the VISTA program.

§ 2556.410 May a sponsor request that a VISTA be removed from its project?

(a) The head of a sponsoring organization, or his or her designee, may request that CNCS remove a VISTA assigned to its project. Any such request must be submitted in writing to the appropriate State Program Director and should state the reasons for the request.

(b) The State Program Director may, at his or her discretion, attempt to resolve the situation with the sponsor so that an alternative solution other than removal of the VISTA from the project assignment is reached.

(c) When an alternative solution, as referenced in paragraph (b) of this section, is not sought, or is not reached within a reasonable time period, the State Program Director

shall remove the VISTA from the project.

§ 2556.415 May CNCS remove a VISTA from a project without the sponsor's request for removal?

Of its own accord, CNCS may remove a VISTA from a project assignment without the sponsor's request for removal.

§ 2556.420 What are termination for cause proceedings?

(a) Termination for cause proceedings are initiated by the State Program Director when CNCS removes a VISTA from a project assignment due to an alleged deficiency, or alleged deficiencies, in conduct or performance.

(b) The State Program Director or other CNCS State Office staff, to the extent practicable, communicates the matter with the VISTA who is removed from a VISTA project and the administrative procedures as set forth in paragraphs (c) through (e) of this section.

(c) The State Program Director shall notify VISTA in writing of CNCS's proposal to terminate for cause. The written proposal to terminate him or her for cause must give the VISTA the reason(s) for the proposed termination, and notify him or her that he or she has 10 calendar days within which to answer in writing the proposal to terminate him or her for cause, and to furnish any accompanying statements or written material. The VISTA must submit any answer to the appropriate State Program Director identified in the written proposal to terminate for cause within the deadline specified in the proposal to terminate for cause.

(d) Within 10 calendar days of the expiration of the VISTA's deadline to answer the proposal to terminate for cause, the appropriate State Program Director shall issue a

written decision regarding the proposal to terminate for cause.

(1) If the decision is to terminate the VISTA for cause, the decision shall set forth the reasons for the determination and the effective date of termination (which may be on or after the date of the decision).

(2) If the decision is not to terminate the VISTA for cause, the decision shall indicate that the proposal to terminate for cause is rescinded.

(e) A VISTA who does not submit a timely answer to the appropriate State Program Director, as set forth in paragraph (c) of this section, is not entitled to appeal the decision regarding the proposal to terminate for cause. In such cases, CNCS may terminate the VISTA for cause, on the date identified in the decision, and the termination action is final.

§ 2556.425 May a VISTA appeal his or her termination for cause?

(a) Within 10 calendar days of the appropriate State Program Director's issuance of the decision to terminate the VISTA for cause, as set forth in § 2556.420(d), the VISTA may appeal the decision to the appropriate Area Manager. The appeal must be in writing and specify the reasons for the VISTA's disagreement with the decision.

(b) CNCS shall not incur any expenses or travel allowances for the VISTA in connection with the preparation or presentation of the appeal.

(c) The VISTA may have access to records as follows:

(1) The VISTA may review any material in the VISTA's official CNCS file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of documents that may be withheld include references obtained under pledge of confidentiality, official files of other program

participants, and privileged intra-agency documents.

(2) The VISTA may review relevant records in the possession of a sponsor to the extent such documents are disclosable by the sponsor under applicable freedom of information act and privacy laws.

(d) Within 14 calendar days of receipt of any appeal by the VISTA, the Area Manager or equivalent CNCS official shall issue a written appeal determination. The appeal determination shall indicate the reasons for such an appeal determination. The appeal determination shall be final.

§ 2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?

(a) Only a VISTA whose early termination from the VISTA program is for cause, and who has answered the proposal to terminate him or her for cause in a timely manner, as set forth in § 2556.420(c), is entitled to appeal the early termination action, as referenced in § 2556.425. A termination for cause is based on a deficiency, or deficiencies, in the performance or conduct of a VISTA.

(b) The following types of early terminations from the VISTA program are not terminations for cause, and are not entitled to appeal under the early termination appeal procedure set forth in §§ 2556.420 and 2556.425:

(1) Resignation from the VISTA program prior to the issuance of a decision to terminate for cause, as set forth in § 2556.420(d);

(2) Early termination from the VISTA program because a VISTA did not secure a suitable reassignment to another project; and

(3) Medical termination from the VISTA program.

Subpart F – Summer Associates

AUTHORITY: 42 U.S.C. 4954(d), (e).

§ 2556.500 How is a position for a summer associate established in a project?

(a) From time-to-time, the State Program Director invites sponsors within the state to apply for one or more positions for individuals to serve as summer associates at the sponsor's VISTA project.

(b) Subject to VISTA assistance availability, CNCS approves the establishment of summer associate positions based on the following factors:

(1) The need in the community, as demonstrated by the sponsor, for the performance of project activities by a summer associate(s);

(2) The content and quality of summer associate project plans;

(3) The capacity of the sponsor to implement the summer associate project activities; and

(4) The sponsor's compliance with all applicable parts of the DVSA, VISTA program policy, and the sponsor's Memorandum of Agreement, which incorporates their project application.

§ 2556.505 How do summer associates differ from other VISTAs?

Summer associates differ from other VISTAs in the following ways:

(a) Summer associates are not eligible to receive:

(1) Health care through a health benefits program provided by CNCS;

(2) Child care support through a child care program provided by CNCS;

(3) Payment for settling-in expenses; or

(4) Non-competitive eligibility in accordance with 5 CFR 315.605.

(b) Absent extraordinary circumstances, summer associates are not eligible to receive:

(1) Payment for travel expenses incurred for travel to or from the project site to which the summer associate is assigned; or

(2) A baggage allowance for the costs of transporting personal effects to or from the project site to which the summer associate is assigned to serve.

(c) CNCS may discharge a summer associate due to a deficiency, or deficiencies, in conduct or performance. Summer associates are not subject to subpart E of this part, or to the grievance procedures provided to VISTAs set forth in §§ 2556.345 through 2556.365.

Subpart G – VISTA Leaders

AUTHORITY: 42 U.S.C. 4954(b).

§ 2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?

(a) At its discretion, CNCS may approve the establishment of a leader position based on the following factors:

(1) The need for a leader in a project of a substantial size and with multiple VISTAs assigned to serve at that project, or the need for leader for multiple projects located within a contiguous geographic region.

(2) The need for a leader to assist with the communication of VISTA policies and administrative procedures to VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(3) The need for a leader to assist with the professional development of VISTAs

within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(4) The need for a leader to assist with the recruitment and preparation for the arrival of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(5) The capacity of the VISTA supervisor to support and guide the leader.

(b) A sponsor may request, in its project application, that CNCS establish a leader position in its project.

§ 2556.605 Who is eligible to apply to serve as a leader?

An individual is eligible to apply to serve as a leader if he or she has successfully completed any of the following:

(a) At least one year of service as a VISTA;

(b) At least one full term of service as a full-time AmeriCorps State and National member;

(c) At least one full term of service as a member of the AmeriCorps National Civilian Community Corps (NCCC); or

(d) At least one traditional term of service as a Peace Corps Volunteer.

§ 2556.610 What is the application process to apply to become a leader?

(a) Application package. An eligible individual must apply in writing to CNCS to become a leader. The sponsor's recommendation and related materials, described in paragraph (b) of this section, must be included with the individual's application to become a leader.

(b) Sponsor recommendation. A sponsor where an individual is seeking to serve

as a leader must recommend in writing to CNCS the individual to become a leader.

Included with the recommendation must be an evaluation of the individual's performance while in previous service, a description of specific tasks, responsibilities, qualifications, and other relevant information that justifies the placement of the individual in a leader position, and if appropriate, the establishment of a leader position.

(c) Selection. CNCS shall have sole authority to select a leader. The criteria for selection shall include consideration of the individual's application and the sponsor's recommendation described in paragraph (b) of this section.

§ 2556.615 Who reviews a leader application and who approves or disapproves a leader application?

CNCS reviews the application package for the leader position, considers the recommendation of the sponsor, and approves or disapproves the individual to serve as a leader.

§ 2556.620 How does a leader differ from other VISTAs?

The application process to apply to become a leader, as described in § 2556.610, is separate and distinct from the application process to apply to enroll as a VISTA in the VISTA program:

(a) A leader may receive a living allowance computed at a higher daily rate than other VISTAs, as authorized under section 105(a)(1)(B) of the DVSA.

(b) A leader is subject to all the terms and conditions of service described in § 2556.625.

§ 2556.625 What are terms and conditions of service for a leader?

Though not exhaustive, terms and conditions of service as a leader include:

(a) A leader makes a full-time commitment to serve as a leader, without regard to regular working hours, for a minimum of one year.

(b) To the maximum extent practicable, a leader shall live among and at the economic level of the low-income community served by the project and actively seek opportunities to engage with that low-income community.

(c) A leader aids the communication of VISTA policies and administrative procedures to VISTAs.

(d) A leader assists with the leadership development of VISTAs.

(e) A leader is a resource in the development and delivery of training for VISTAs.

(f) A leader may assist the sponsor with recruitment and preparation for the arrival of VISTAs.

(g) A leader may advise a supervisor on potential problem areas and needs of VISTAs.

(h) A leader aids VISTAs in the development of effective working relationships and understanding of VISTA program concepts.

(i) A leader may aid the supervisor and sponsor in directing or focusing the VISTA project to best address the community's needs.

(j) A leader may serve as a collector of data for performance measures of the project and the VISTAs.

(k) A leader is prohibited from supervising VISTAs. A leader is also prohibited from handling or managing, on behalf of the project, personnel-related matters affecting VISTAs. Personnel-related matters affecting VISTAs must be managed and handled by

the project and in coordination with the appropriate CNCS State Office.

Subpart H – Restrictions and Prohibitions on Political Activities and Lobbying

AUTHORITY: 42 U.S.C. 4954(a), 5043, and 5055(b).

§ 2556.700 Who is covered by this subpart?

(a) All VISTAs, including leaders and summer associates, are subject to this subpart.

(b) All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA grant assistance are subject to this subpart.

(c) All VISTA sponsors and subrecipients are subject to this subpart.

§ 2556.705 What is prohibited political activity?

For purposes of the regulations in this subpart, “prohibited political activity” means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

§ 2556.710 What political activities are VISTAs prohibited from engaging in?

(a) A VISTA may not use his or her official authority or influence to interfere with or affect the result of an election.

(b) A VISTA may not use his or her official authority or influence to coerce any individual to participate in political activity.

(c) A VISTA may not use his or her official VISTA program title while participating in prohibited political activity.

(d) A VISTA may not participate in prohibited political activities in the following circumstances:

- (1) While he or she is on duty;
- (2) While he or she is wearing an article of clothing, logo, insignia, or other similar item that identifies CNCS, the VISTA program, or one of CNCS's other national service programs;
- (3) While he or she is in any room or building occupied in the discharge of VISTA duties by an individual employed by the sponsor; and
- (4) While using a vehicle owned or leased by a sponsor or subrecipient, or while using a privately-owned vehicle in the discharge of VISTA duties.

§ 2556.715 What political activities may a VISTA participate in?

- (a) Provided that paragraph (b) of this section is fully adhered to, a VISTA may:
 - (1) Express his or her opinion privately and publicly on political subjects;
 - (2) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of similar character;
 - (3) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and
 - (4) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as a VISTA, or compromise the neutrality, efficiency, or integrity of CNCS or the VISTA program.
- (b) A VISTA may participate in political activities set forth in paragraph (a) of this section as long as such participation:
 - (1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

- (2) Does not interfere with his or her provision of service in the VISTA program;
- (3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;
- (4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;
- (5) Is not conducted during scheduled VISTA service hours; and
- (6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.720 May VISTAs participate in political organizations?

- (a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:
 - (1) Be a member of a political party or other political group and participate in its activities;
 - (2) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;
 - (3) Attend and participate fully in the business of nominating caucuses of political parties;
 - (4) Organize or reorganize a political party organization or political group;
 - (5) Participate in a political convention, rally, or other political gathering; and
 - (6) Serve as a delegate, alternate, or proxy to a political party convention.
- (b) A VISTA may participate in a political organization as long as such

participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§2556.725 May VISTAs participate in political campaigns?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the prohibitions set forth in § 2556.710;

(2) Initiate or circulate a nominating petition for a candidate for partisan political office;

(3) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(4) Endorse or oppose a partisan political candidate or a candidate for political

party office in a political advertisement, broadcast, campaign literature, or similar material; and

(5) Address a convention caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office.

(b) A VISTA may participate in a political campaign as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.730 May VISTAs participate in elections?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

- (1) Register and vote in any election;
- (2) Act as recorder, watcher, challenger, or similar officer at polling places;

- (3) Serve as an election judge or clerk, or in a similar position; and
- (4) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.
- (5) Participate in voter registration activities.
- (b) A VISTA may participate in elections as long as such participation:
 - (1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;
 - (2) Does not interfere with the provision of service in the VISTA program;
 - (3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;
 - (4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;
 - (5) Is not conducted during scheduled VISTA service hours; and
 - (6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.735 May a VISTA be a candidate for public office?

- (a) Except as provided in paragraph (c) of this section, no VISTA may run for the nomination to, or as a candidate for election to, partisan political office.
- (b) In accordance with the prohibitions set forth in § 2556.710, a VISTA may participate in elections as long as such participation:
 - (1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

- (2) Does not interference with the provision of service in the VISTA program;
 - (3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;
 - (4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;
 - (5) Is not conducted during scheduled VISTA service hours; and
 - (6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.
- (c) Provided that paragraphs (a) and (b) of this section are adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:
- (1) Run as an independent candidate in a partisan election in designated U.S. municipalities and political subdivisions as set forth at 5 CFR part 733; and
 - (2) Run as a candidate in a non-partisan election.

§ 2556.740 May VISTAs participate in political fundraising activities?

- (a) Provided that paragraphs (b) through (d) of this section are fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:
- (1) Make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election;
 - (2) Attend a political fundraiser; and
 - (3) Solicit, accept, or receive uncompensated volunteer services for a political campaign from any individual.
- (b) A VISTA may participate in fundraising activities as long as such

participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) A VISTA may not knowingly:

(1) Personally solicit, accept, or receive a political contribution from another individual;

(2) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(3) Allow his or her perceived or actual affiliation with the VISTA program, or his or her official title as a VISTA, to be used in connection with fundraising activities; or

(4) Solicit, accept, or receive uncompensated individual volunteer services from a subordinate, (e.g., a leader may not solicit, accept or receive a political contribution from a VISTA).

(d) Except for VISTAs who reside in municipalities or political subdivisions

designated under 5 CFR part 733, no VISTA may accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

§ 2556.745 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?

(a) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before CNCS or the VISTA program.

(b) A VISTA may not knowingly solicit or discourage the participation of any political activity of any individual who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by or through CNCS or the VISTA program.

§ 2556.750 What restrictions and prohibitions are VISTAs subject to who campaign for a spouse or family member?

A VISTA who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same restrictions and prohibitions as other VISTAs, as set forth in § 2556.725.

§ 2556.755 May VISTAs participate in lawful demonstrations?

In accordance with the prohibitions set forth in § 2556.710, VISTAs may participate in lawful demonstrations, political rallies, and other political meetings, so long as such participation is in conformance with all of the following:

- (a) Occurs only while on authorized leave or while otherwise off duty;
- (b) Does not include attempting to represent, or representing the views of VISTAs or the VISTA program on any public issue;
- (c) Could not be reasonably understood by the community as being identified with the VISTA program, the project, or other elements of VISTA service; and
- (d) Does not interfere with the discharge of VISTA duties.

§ 2556.760 May a sponsor and subrecipient approve the participation of a VISTA in a demonstration or other political meeting?

(a) No VISTA sponsor or subrecipient shall approve a VISTA to be involved in planning, initiating, participating in, or otherwise aiding or assisting in any demonstration or other political meeting.

(b) If a VISTA sponsor or subrecipient which, subsequent to the receipt of any CNCS financial assistance, including the assignment of VISTAs, approves the participation of a VISTA in a demonstration or other political meeting, shall be subject to procedures related to the suspension or termination of such assistance, as provided in subpart B of this part, §§ 2556.135 through 2556.140.

§ 2556.765 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?

Violations by a VISTA of any of the prohibitions or restrictions set forth in this subpart may warrant termination for cause, in accordance with proceedings set forth at §§ 2556.420, 2556.425, and 2556.430.

§ 2556.770 What are the requirements of VISTA sponsors and subrecipients regarding political activities?

(a) All sponsors and subrecipients are required to:

(1) Understand the restrictions and prohibitions on the political activities of VISTAs, as set forth in this subpart;

(2) Provide training to VISTAs on all applicable restrictions and prohibitions on political activities, as set forth in this subpart, and use training materials that are consistent with these restrictions and prohibitions;

(3) Monitor on a continuing basis the activity of VISTAs for compliance with this subpart; and

(4) Report all violations, or questionable situations, immediately to the appropriate CNCS State Office.

(b) Failure of a sponsor to comply with the requirements of this subpart, or a violation of the requirements contained in this subpart by the sponsor or subrecipient, sponsor or subrecipient's covered employees, agents, or VISTAs, may be deemed to be a material failure to comply with terms or conditions of the VISTA program. In such a case, the sponsor shall be subject to procedures related to the denial or reduction, or suspension or termination, of such assistance, as provided in §§ 2556.125, 2556.130, and 2556.140.

§ 2556.775 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors and subrecipients?

All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA funds are subject to all applicable prohibitions and restrictions described in this subpart in the following circumstances:

(a) Whenever they are engaged in an activity that is supported by CNCS or VISTA funds or assistance; and

(b) Whenever they identify themselves as acting in their capacity as an official of a VISTA project that receives CNCS or VISTA funds or assistance, or could reasonably be perceived by others as acting in such a capacity.

§ 2556.780 What prohibitions on lobbying activities apply to VISTA sponsors and subrecipients?

(a) No VISTA sponsor or subrecipient shall assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.

(b) No VISTA sponsor or subrecipient shall use any CNCS financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

Dated: October 6, 2015.

Jeremy Joseph,

General Counsel

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