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United States Department of Agriculture

Office of Communications

Washington, D.C. 20250-1300

May 31, 1995

MEMORANDUM FOR JOEL BERG

FROM: Ron De Munbrun RND

SUBJECT: Conversation with Mr. Lloyd Wilhelm, Four-Corners Facilitator; Rick Minnella, and Steven Leffeolholz of NFC, Concerning the Overpayment of AmeriCorps Members for Time in Excess of 80 Hours in a Pay Period

I spoke via phone to Lloyd Wilhelm of CFSA, Rick Minnella, and Steven Leffeolholz of NFC to determine why some NRCS Rural Development Team members were paid time and a half for hours in excess of 80 hours in a pay period. Here is what I learned:

1. In October 1994, as members came on board the question was raised by members and the state offices in Arizona, Colorado, New Mexico, and Utah as to whether the members were eligible for overtime for excess of 8 hours in a day or 80 hours in a pay period. It was explained to all parties that the members were NOT covered by the Fair Labor Standards Act and were NOT eligible for overtime. It was further explained, and described in our operations manual that any hours in excess of 8 in a day or 80 in a pay period would be credit to service and would be paid at the base rate.

2. At some point, either when they were brought on board or shortly thereafter, 21 members of the NRCS had entries made in their personnel record for pay that listed them as being "Non-Exempt" from the Fair Labor Standards Act (FLSA). This means that the member is covered by FLSA and should be paid at the overtime rate for any hours over 8 hours in a day or over 80 in a pay period. The payroll system makes an automatic computation based on the fact that the T&A shows code 21 hours and the fact that the person has been designated as "Non-Exempt."

3. Members submit hard copy T&As to their state offices and the information is entered into the PC-TARE system at the state office. Members have always coded any hours in excess of 8 in a day or 80 in a pay period as code 21, which in accordance with our operations manual is the proper code and would allow them to be paid for those hours at the base rate.

4. The Colorado state office had a question on this and the site supervisor reaffirmed that the members should not be paid time and a half. Members in Colorado were not overpaid. It appears that they were properly coded as being "Exempt" from FLSA. In short, they were paid properly.

5. Someone, as yet undetermined, in the Arizona, New Mexico, and Utah entered the affected members into the payroll system as being "Non-Exempt" from FLSA which means they were paid overtime rates for their code 21 hours.

6. Then it appears that sometime during pay period 8, people in the personnel offices of Arizona, New Mexico, and Utah discovered that the members were erroneously listed as being "Non-Exempt" and their status was changed to "Exempt". The date of the change was listed as being the date that the person reported on board back in October 1994.

7. Whenever there is a change of status like this and the effective date is not the current date but a date in the past, the payroll system does a check to see if the change in status resulted in the member being overpaid or underpaid and then either issues a collection notice or issues a check to the member.

8. The collection notices are not sent directly to the member. They are sent to the appropriate personnel office, which then must give them to the member.

9. The overpayment was not caused by the members and since they pay was expected to increase because they had worked overtime it was not easily detectable. Members are now being asked to make restitution and pay interest on the money.

10. This could have been handled much more smoothly if the personnel office had talked to someone BEFORE this whole process started. They had to know that when they made the change in status the members were going to have to make restitution and that the members would get these collection notices.

Pertinent Facts:

1. According to Stephen Leffeolholz, Paul Johnson can waive collection of the interest on the overpayments.

2. According to Stephen Leffeolholz, Paul Johnson can waive up to $1,500 of overpayments.

3. As best as we can determine, the total amount of the overpayments made to the nine AmeriCorps members is $1,383.78.

4. One person had an over payment of $8.78. Since that amount is under $10, NFC did not according to standard procedures send out a notice. They just deducted the amount from the person's paycheck. That deduction has already taken place.

5. Collections of the overpayments over $10 are not expected to begin until pay period 13. In the case of the person with the largest overpayment, $507, $77 dollars will be deducted from that person's pay for the next 7 pay periods. The problem is that the person will not be in the program for until pay period 20. It is possible the person will

complete their service in pay period 14, which means that any remaining amount of the collection will be deducted from their final check. This could be as much as $400 from one pay check. Others may be in a similar situation. Most people are scheduled to leave the program in pay period 15 or 16.

Possible solutions:

1. Paul Johnson can request in writing to Stephen Leffeolholz that the interest be waived.

2. Forgive all of the overpayment.

3. At the very least, NRCS must send a memo from Washington to the Arizona, New Mexico, and Utah state offices informing them of the proper procedures so over payments do not continue.

UNITED STATES DEPARTMENT OF AGRICULTURE

June 5, 1995

TO: Paula Cole Jones, Lloyd Wright

FROM: Joel Berg JB

SUBJECT: The Overpayment of Select NRCS AmeriCorps Members

As you can see from the attached memorandum by Ron De Munbrun, a mistake in three NRCS personnel offices caused nine AmeriCorps Members in the NRCS Four-Corners Rural Development program to be overpaid a total of $1,584.24. This error has just been corrected resulting in the Members receiving collections notices from the National Finance Center. The receipt of these notices and the manner in which in this situation was handled has caused a great deal of concern among the Members. It was particularly offensive to them to be told that they will be charged 8.125% interest on these monies when they did not make the mistake. They reported their time correctly, it was the NRCS personnel offices who had erroneously listed them as being "non-exempt" from the Fair Labor Standards Act (FLSA).

At this point I see three options:

1. We can do nothing and allow NFC to make deductions from the Members' pay including the interest. This will surely generate a number of complaints by the Members to their Congressional representatives and the Corporation for National and Community Service.

2. Paul Johnson, as an agency head, has the authority to waive the collection of the interest. This can be done simply by his sending a memo to NFC.

3. Because this error was not the Members fault and was not easily detectable by them (they expected their pay to increase because they were working more than 40 hours and the fact that a premium was being paid to them was not obvious) NRCS could waive the entire amount to be collected from all nine members, $1,584.24. Such a waiver is well within the Chief's discretionary authority, given that an agency head has the authority to waive up to $1,500 per person. Again this is done by memo from Chief Johnson to NFC.

June 5, 1995

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AMOUNT OF OVERPAYMENT TO NRCS AMERICORPS MEMBERS

NAME	AMOUNT
Barry Carver	$507.29
Jason Costello	$66.50
Marcia Delaney	$313.79
Kevin Gaudette	$371.00
Mary Halloran	$150.77
Usha Little	$166.11
Julia Marcellus*	$8.78
TOTAL:	$1,584.24
* This amount has already been collected	