

# FOIA MARKER

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**Collection/Record Group:** Clinton Presidential Records

**Subgroup/Office of Origin:** Americorps

**Series/Staff Member:** General Files

**Subseries:**

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**OA/ID Number:** 24230

**FolderID:**

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**Folder Title:**

Legal Issues: General (Legal)

**Stack:**  
**S**

**Row:**  
**66**

**Section:**  
**1**

**Shelf:**  
**4**

**Position:**  
**2**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Joel Berg to Kenneth Cohen re: personal (3 pages)	08/17/1994	b(6)

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**COLLECTION:**

Clinton Presidential Records  
AmeriCorps  
General Files  
OA/Box Number: 24230

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**FOLDER TITLE:**

Legal Issues: General (Legal)

2013-0661-F

rc3121

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**RESTRICTION CODES****Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

**Freedom of Information Act - [5 U.S.C. 552(b)]**

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



October 3, 1996

MEMORANDUM FOR KEN COHEN, ASSISTANT GENERAL COUNSEL

FROM:  RON DE MUNBRUN  
USDA NATIONAL SERVICE

SUBJECT: Determination of Propriety of Mr. De Munbrun Serving on the Board of Directors of a Non-Profit Organization.

I realize that Mr. J. Michael Kelly is the Department's Ethics Officer, but since my request is time sensitive and because it is my understanding that Mr. Kelly often assigns requests for guidance on ethics issues to your office, I writing to you directly.

As a government employee, I understand that there are restrictions placed on my non-work activities. I am writing to request your determination as to whether or not it is allowable for me to have specific relationships with the two types of organizations described below:

**1. Sec. 501(c)(3) - Non-Profit Organization**

My wife is a weaver. She wishes to incorporate a non-profit (non-stock) organization in the State of Maryland and apply for a Federal tax exemption with the Internal Revenue Service as a Sec. 501(c)(3) non-profit organization, meaning that it would be exempt from Federal taxes and contributions made to it would be tax deductible. This organization would function as a religious ministry making woven goods and training available to the needy and distressed. Sec. 501(c)(3) organizations can apply for and are sometimes encouraged to apply for Federal, State, and local grants. My wife's and my proposed relationship with this organization is as follows:

- a. I would be the President and Treasurer of the organization. In this capacity I would also serve as a voting member of the organization's board of directors.
- b. I would be listed as the "Resident Agent" for the organization under the State of Maryland statutes governing incorporation.
- c. My wife would be executive director of the organization and the chairman of the board of directors.

I guess I have six questions:

- a. Is it allowable for me to serve in the organization as described above?
- b. Does the fact that I am a Federal Employee preclude even my wife from organizing a Sec. 501(c)(3) organization. In other words, even if I don't serve in the organization, is it permissible for just my wife to serve in the capacity described above?
- c. Is it allowable for me to serve in the organization and have that organization compete for Federal grants from Federal agencies other than the Department of Agriculture?
- d. If it is allowable for the organization to be formed, can it apply for Federal grants from Federal agencies other than the Department of Agriculture if I am not serving as a member of the organization.
- e. If it is allowable for the organization to be formed, can just my wife or can both of us receive as stipend for our services, if the organization's board approves such a stipend?
- f. Does the fact that I have worked with, but not managed nor approved grants for non-profit organizations while fulfilling my duties at USDA for the past 2½ years mean that I can not serve in the capacities described above?

## **2. Sec. 501 - Non-Profit Organization (all except 501(c)(3))**

Again, my wife in her capacity as a weaver, wishes to incorporate a non-profit (non-stock) organization in the State of Maryland and apply for a Federal tax exemption with the Internal Revenue Service as a Sec. 501 non-profit organization other than a Sec. 501 (c)(3) organization, meaning that it would have fewer exemptions from Federal taxes and contributions made to it would not be tax deductible. This organization would function to educate people on weaving techniques and make woven goods available at costs below the cost of labor and materials for the woven goods. My wife's and my proposed relationship with this organization would be the same as for the first organization, which is:

- a. I would be the President and Treasurer of the organization. In this capacity I would also serve as a voting member of the organization's board of directors.
- b. I would be listed as the "Resident Agent" for the organization under the State of Maryland statutes governing incorporation.
- c. My wife would be executive director of the organization and the chairman of the board of directors.

With respect to this organization the six questions are:

- a. Is it allowable for me to serve in the organization as described above, even if it is not permissible for me to serve in a Sec. 501(c)(3) organization?
- b. Does the fact that I am a Federal Employee preclude even my wife from organizing a non-profit organization other than a Sec. 501(c)(3) organization. In other words, even if I don't serve in the organization, is it permissible for just my wife to serve in the capacity described above?
- c. Is it allowable for me to serve in the organization and have that organization compete for Federal grants from Federal agencies other than the Department of Agriculture?
- d. If it is allowable for the organization to be formed, can it apply for Federal grants from Federal agencies other than the Department of Agriculture if I am not serving as a member of the organization.
- e. If it is allowable for the organization to be formed, can just my wife or can both of us receive as stipend for our services, if the organization's board approves such a stipend?
- f. Does the fact that I have worked with, but not managed nor approved grants for non-profit organizations while fulfilling my duties at USDA for the past 2½ years mean that I can not serve in the capacities described above?

I realize that you are extremely busy but I hope that you can reply to this request soon. My wife is interested in getting the organization established as quickly as possible and there are substantial lead times required for the steps we must take IF you determine that one or both of the organizations can be formed. I also realize that never having done this before, I may not have presented all the information that you need to make a determination. If you need to speak to me further please contact me at (202) 690-3894.

Finally, I would like to thank you for time and effort that you will expend to review this request.

cc: J. Berg

MEMORANDUM FOR KEN COHEN, ASSISTANT GENERAL COUNSEL

FROM: JOEL BERG  
DIRECTOR NATIONAL SERVICE

SUBJECT: USDA AmeriCorps Issues

As you may know, one of Secretary Glickman's top priorities is the support of "gleaning" programs. I have been working with the Secretary and his staff to establish a "summer of gleaning" program as part of this year's USDA AmeriCorps (National Service) program. The Corporation for National Service is amending their current grant to USDA to allow us to conduct such a program this summer. As is often the case, the actual implementation of this program raises an issue which has not been addressed before and requires consultation with your office before we can proceed. Specifically, a central component the "summer of gleaning" program design is the recruitment of volunteers to assist our AmeriCorps Members in conducting the program, which raises issues with respect to liability and compensation for injury, etc.

As always, I understand that the demands on your time often exceed the hours in a day but I hope that we can meet with you to resolve these issues as quickly as possible. For your reference I have listed the issues in their order of priority, the first being the highest priority. Because these issues are rather complex, I would suggest that we sit down with you to discuss them prior to your undertaking any lengthy review of the matter. This way we could be certain that we have framed our questions accurately and that could ask any clarifying questions that may be necessary. As the program is scheduled to begin in late May I would appreciate meeting with you at your earliest convenience so that we can resolve these issues and implement the Secretary's program.

ISSUE NUMBER 1

STATUS OF VOLUNTEERS

The "summer of gleaning" program will consist in large of USDA AmeriCorps Members recruiting and assisting volunteers (non-compensated) members of the communities in which the programs are taking place.

BACKGROUND:

- a. Acceptance of Volunteer Service. 7 USC 2272 (attached) provides that

(a) The Secretary Of Agriculture (hereafter referred to in this subtitle as the "Secretary") may establish a program to sue volunteers in carrying out the programs of the Department of Agriculture.

(B)The Secretary may accept, subject to regulations issued by the Office of Personnel Management, voluntary service for the Department of Agriculture for such purpose if the service:

- (1) is to be without compensation; and
- (2) will not be used to displace any employee of the Department of Agriculture including the local, county and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act.

Because the volunteers serving in the "summer of gleaning" program will not be compensated and because they will not displace any employee of the Department, the volunteers seem to meet the conditions set forth in (1) and (2) above.

#### QUESTIONS:

1. Does this mean that the Department can recruit such volunteers and accept their service in the "summer of gleaning" program?
2. Does the Secretary have to specifically establish a program (similar to the NRCS Earth Team program) into which the members are recruited in order for the Department to accept their voluntary service? If so, what is the easiest mechanism the Secretary can use to establish the program.
3. Does the existence of a USDA AmeriCorps program constitute a "program" for the purposes of accepting their service?

#### ISSUE NUMBER 2

#### LIABILITY AND INJURY COVERAGE FOR VOLUNTEERS

#### BACKGROUND

Gleaning involves a number of activities such as harvesting crops that have been left by traditional means of harvest or collecting food from grocery stores and restaurants and providing it to organizations who distribute it to the needy. Many if not all states have "good Samaritan" laws that relieve donors and those who provide "gleaned" food from liability arising from illness caused by the food, etc.

7 USC 2272 states that:

© Any individual who proves voluntary service under this subtitle shall not be considered a Federal employee, except for purposes of chapter 81 of title 5, United States Code (relating to compensation for injury), and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

The Secretary has raised two concerns: (1) would the volunteers in the “summer of gleaning” program have liability and injury coverage; (2) will the participant’s in the “summer of gleaning” program be covered by the “good Samaritan laws” of the states in which the individual components of the “summer of gleaning” program will be operating?

QUESTIONS:

1. If the volunteers participating in the “summer of gleaning” are in an approved program (as determined under ISSUE 1) will they be considered Federal employees only for purposes of chapter 81 of title 5, United States Code (relating to compensation for injury), and sections 2671 through 2680 of title 28, United States Code (relating to tort claims)?
2. Would an individual “summer of gleaning” project sponsored a USDA agency be exempt from liability associated with the collection and distribution of surplus food because it was a program run by a Federal Department?
3. Assuming that the program would not be exempt because it is run by a Federal department and assuming that the state in which the project was operating had a “good Samaritan” law that covered individuals and organizations is there anything that prevents a USDA Agency sponsored “summer of gleaning” program from being covered by that law?



United States  
Department of  
Agriculture

Office of the  
General  
Counsel

Washington,  
D.C.  
20250-1400

*Memo  
to  
Joel*

March 14, 1994

MEMORANDUM FOR JOEL BERG  
DEPUTY DIRECTOR  
OFFICE OF PUBLIC AFFAIRS

FROM: Kenneth E. Cohen *Kenneth E. Cohen*  
Assistant General Counsel  
Research and Operations Division

SUBJECT: Chicago and Arizona National Service Projects

I have reviewed the two proposals you have given me today for funding by the Corporation for National and Community Service. I conclude that the proposals for projects in Chicago and Arizona are authorized by the National and Community Trust Act of 1993 and by the various program and funding authorities of the Extension Service, Forest Service, Soil Conservation Service, and Agricultural Stabilization and Conservation Service.

I note that 7 CFR 3015.158 requires that grants and cooperative agreements may be awarded by the Department only after competition, unless written justification is made that a noncompetitive award is in the best interest of the Government. Since the Chicago and Arizona projects would entail noncompetitive awards, no such award may be made without compliance with that regulatory requirement.

Because of the stringent deadline -- the proposals are to be submitted today -- I have not been able to review the proposals against the other regulatory requirements of the Department or of the Corporation.

CLEARANCES

John Berg  
OPA

3/14/94  
DATE

Gene E. Elit  
OGC

3/14/94  
DATE

R. Wood  
OBPA

3/14/94  
DATE

\_\_\_\_\_  
COUNSEL TO THE SECRETARY

\_\_\_\_\_  
DATE



United States  
Department of  
Agriculture

Office of the  
General  
Counsel

Washington,  
D.C.  
20250-1400

MAR 11 1994

(File) 061

*Memo  
to  
Joel*

MEMORANDUM FOR JOEL BERG  
DEPUTY DIRECTOR  
OFFICE OF PUBLIC AFFAIRS

FROM: Kenneth E. Cohen *Jenneth Cohen*  
Assistant General Counsel  
Research and Operations Division

SUBJECT: National Service Projects

This memorandum summarizes the conclusions of our March 7, 1994, meeting with Terry Russell, Acting General Counsel, Corporation for National and Community Service. The Corporation is charged by Congress with administering the National and Community Trust Act of 1993, Pub. L. No. 103-82, 107 Stat. 785. (References are to Subtitle C, Part I of the National and Community Service Act of 1990, as amended.) Accordingly, courts will be deferential to the Corporation interpretation of the Act.

Based on our discussion with Mr. Russell, we reached the following conclusions:

1. USDA may receive assistance from the Corporation. (section 121(b)(1), 107 Stat. 788).
2. The Act confers upon USDA the authority, if it receives Corporation assistance under section 121, to conduct national service programs or to enter into contracts or cooperative agreements. While USDA is not fettered in the type of entity that may receive assistance from USDA, existing national service programs should under section 121(b)(4) be considered.
3. If USDA receives assistance under section 121, then USDA is authorized and required to pay stipends, health care, and child care. (Sections 140(a), (d), and (e), 107 Stat. 811-813).
4. USDA has no general authority to provide national service educational awards directly and it may not provide funds to the Trust for such purpose.

We also concluded that it is possible for USDA to conduct to some degree national service programs without section 121 assistance, but the extent of such programs would have to be

reviewed case-by-case. Receiving assistance under section 121 confers considerable authority on USDA under the Act that we otherwise would not enjoy generally. No minimum amount of assistance from the Corporation is required to trigger section 121.

Finally, I cautioned that any financing mechanisms used within USDA should assure that agency appropriations are not augmented unlawfully.



MAR 11 1994

*Memorandum  
in  
file*

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PHOTOCOPY  
PRESERVATION

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*Memo*

March 14, 1994

*(File) @ OGC*

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\_\_\_\_\_  
COUNSEL TO THE SECRETARY

\_\_\_\_\_  
DATE




United States  
Department of  
Agriculture

Office of the  
General  
Counsel

Washington,  
D.C.  
20250-1400

MAY 12 1995

MEMORANDUM FOR JOEL BERG  
DIRECTOR OF NATIONAL SERVICE

FROM: Kenneth E. Cohen   
Assistant General Counsel  
Research and Operations Division

SUBJECT: Funding of USDA AmeriCorps Program Rural  
Development Participation Agreements

This clarifies the September 21, 1994, memorandum from James S. Gilliland, General Counsel, to Bob J. Nash, Under Secretary of Agriculture for Small Community and Rural Development (now the Under Secretary of Agriculture for Rural Economic and Community Development), concerning the Farmers Home Administration ("FmHA") and Rural Development Administration ("RDA") AmeriCorps Program. In that memorandum, Mr. Gilliland concluded that, because FmHA and RDA had a *bona fide* need in fiscal year ("FY") 1994 to provide "assistance" to AmeriCorps participants by entering into the participation agreements during FY 1994, FmHA and RDA could use FY 1994 appropriations to fund the participation agreements, notwithstanding the fact that the services to be carried out by the AmeriCorps participants would be performed in FY 1995.

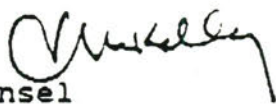
The opinion given in Mr. Gilliland's September 21, 1994, memorandum is not limited to FmHA and RDA use of FY 1994 appropriations. Because the *bona fide* need in each FY of the USDA AmeriCorps program is to provide immediately "assistance" to the AmeriCorps participants by entering into the participation agreements, each USDA agency involved in carrying out AmeriCorps programs may use its current FY's appropriations to fund the participation agreements, notwithstanding the fact that the services will be performed by the AmeriCorps participants in the subsequent FY.



September 6, 1994

File

MEMORANDUM FOR THE DEPUTY SECRETARY

FROM: James Michael Kelly   
Associate General Counsel

SUBJECT: Americorps Issues

You have asked for my views with respect to the issues raised in the attached memorandum. In my opinion, the issues addressed are important, and they generally do not overstate matters which are genuine concerns for the Corporation for National and Community Service (Americorps). However, the following points need to be kept in mind:

1. These are not issues which are USDA-specific. They apply generally to all Americorps activities. While there is nothing wrong with their being raised within USDA, they are matters which should be addressed by Americorps and not by USDA.

2. The statements that Americorps members' activities on behalf of the Corporation are not covered under the Federal Tort Claims Act (FTCA) or the Federal Employees Compensation Act (FECA), are too simple and thus, at least in part, miss the mark. There may well be situations in which an Americorps member, in carrying out an assignment on behalf of a Federal agency which has received Americorps funding, will be judged to be covered by the FTCA if, while performing a function on behalf of a Federal agency, his negligent act or omission causes damages or injury to a private party. There may also be circumstances in which an Americorps member, who is injured or killed while performing his services as an Americorps member, will be deemed to be covered by FECA because he is adjudged to have been providing services akin to those which an officer or employee of the United States would provide. Therefore, while it may generally be true that neither the FTCA nor FECA will apply to the activities of most Americorps members, no absolute rule of that kind can be drawn at this point.

3. Because the United States is a self-insurer, it generally does not use appropriated funds for the purchase of liability insurance. A genuine question may exist as to whether funds made available to Americorps, which are

received by USDA in the form of a grant, could be utilized for the purchase of such insurance. As we know well, appropriations may only be utilized for the purposes for which they were made available. The availability of funds appropriated for use by Americorps, for purchase of liability insurance covering the activities of its members, should be addressed by Americorps rather than USDA.

In my opinion, (1) it would not be appropriate for this Department to issue an opinion purporting to establish the legal status and rights of Americorps members, either with respect to liability or in any other area; (2) there is nothing wrong with working with the Corporation in seeking a legislative resolution of these issues; (3) USDA should not use funds received from Americorps, or other appropriated funds, for the purchase of liability insurance covering Americorps members, absent a thorough addressing of this issue by the Corporation; and (4) it is generally true that, if we were to enter into relationships with private sector entities for the carrying out of our Americorps activities, a portion of the funds conveyed to such entities could probably be used for the acquisition of insurance covering the activities of Americorps members working under the direction of such entities.

Attachment

DECISION MEMORANDUM FOR THE DEPUTY SECRETARY

THROUGH: James R. Lyons  
Assistant Secretary  
Natural Resources and Environment

FROM: Paul Johnson      Pearlle S. Raed      SEP 01 1994  
Chief                    Associate Chief

SUBJECT: AmeriCorps Member Liability Coverage

ISSUE:

USDA has no written policy for liability coverage for AmeriCorps members, and we are recruiting and selecting participants to begin the program in September 1994.

BACKGROUND:

The National and Community Service Trust Act of 1993 (Public Law 103-82) established a Federal government role for participating in the AmeriCorps Program. USDA submitted a proposal to the Corporation for National and Community Service, and in June 1994 was awarded a \$2.6 million grant. There were 1200 slots provided to sponsor AmeriCorps members.

The Soil Conservation Service received 571 of the AmeriCorps slots. This program is new, and we are working as Team USDA to put the framework in place. We would like to institutionalize the AmeriCorps program in USDA. Administrative issues and processes such as health care, child care, and payroll have been worked out and communicated to USDA State and local managers. At a five-day AmeriCorps training session held in the Washington, D.C. area, August 1994, the employees who will implement this program expressed liability coverage as a primary concern.

Our efforts to get a written USDA policy that can be communicated to the field have so far been unsuccessful.

The National and Community Service Trust Act of 1993 states that AmeriCorps members are not Federal employees. There is no provision in this Act for tort coverage and Federal Employee Compensation Act Coverage.

It is my understanding that an amendment to the law providing for tort coverage is being pursued by the Corporation for National Community Service. There is no guarantee that the amendment will be passed. If the amendment is passed, it is not expected to be enacted prior to our September 1994 start up date.

OPTIONS:

1. At a minimum, establish the legal status and rights of the members in the area of liability coverage. Issue a clear statement regarding tort and Federal Employees Compensation. Include this statement in the USDA Member Agreement and the USDA Operations Manual to ensure that the members are not misled as to their protection for tort and injuries. If there is no coverage, then the burden of this risks falls on the AmeriCorps members.
2. Work with the Corporation and have them get an amendment to the statute that includes coverage for both tort and Federal Employees Compensation. This was successfully accomplished in the Volunteer for Department of Agriculture Program, 7 U.S.C.2272.
3. Use appropriated funds to buy the insurance needed to carry out the program. This option may require reducing the number of slots to provide the necessary funds.
4. Restructure the program to go to third parties who would then be responsible for liability. This option would also require appropriated funds to cover liability, workers' compensation, and other overhead costs assumed by the third party.

RECOMMENDATION:

**First choice option 2.** Work with the Corporation and have them get an amendment to the statute that includes coverage for both tort and Federal Employees Compensation. This was successfully accomplished in the Volunteer for Department of Agriculture Program, 7 U.S.C.2272.

**Second choice option 1 and 3 combined.** At a minimum, establish the legal status and rights of the members in the area of liability coverage. Issue a clear statement regarding tort and Federal Employees Compensation. Include this statement in the USDA Member Agreement and the USDA Operations Manual to ensure that the members are not misled as to their protection for tort and injuries. If there is no coverage, then the burden falls on the AmeriCorps members. Use appropriated funds to buy the insurance needed to carry out the program. This option may require reducing the number of slots to provide the necessary funds.

DECISION MEMORANDUM FOR THE DEPUTY SECRETARY

DECISION BY THE DEPUTY SECRETARY:

Approve \_\_\_\_\_  
Disapprove \_\_\_\_\_  
Discuss with me \_\_\_\_\_  
Date \_\_\_\_\_  
Reviewed by \_\_\_\_\_

SCS/PaulaJones/drd/720-2847/9-1-94/decision

# Withdrawal/Redaction Marker

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rc3121

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Washington,  
D.C.  
20250-1400

SEP 21 1994

MEMORANDUM FOR BOB J. NASH  
UNDER SECRETARY  
SMALL COMMUNITY AND RURAL DEVELOPMENT

FROM: James S. Gilliland  
General Counsel James S. Gilliland

SUBJECT: Farmers Home Administration and Rural Development  
Administration AmeriCorps Program

This responds to your September 14, 1994, memorandum to me concerning the Farmers Home Administration (FmHA) and Rural Development Administration (RDA) AmeriCorps Program. For the reasons discussed below, I conclude that FmHA and RDA may use fiscal year (FY) 1994 appropriations to fund the 132 participation agreements with their AmeriCorps participants, notwithstanding the fact that the services to be carried out by the AmeriCorps participants will be performed in FY 1995.

The National and Community Service Trust Act of 1993, Pub. L. No. 103-82 (the "Act"), authorizes the Corporation for National and Community Service (the "Corporation") to provide grants to private organizations, States, and Federal agencies to conduct national service programs, the primary goals of which are to address unmet human, educational, environmental, and public safety needs of the country; improve the lives of the participants by expanding educational opportunities; and to renew the ethic of civil responsibility and the spirit of community throughout the nation. The Act authorizes Federal Departments to manage national service programs individually or to manage them in partnership with others. Because the Department of Agriculture (USDA) is being awarded a grant from the Corporation under the Act, USDA is authorized and required to pay the participants whom USDA manages directly stipends, health care, and child care. Thus, receiving assistance under the Act confers considerable authority on USDA that we otherwise would not enjoy. In addition, receiving assistance from the Corporation and managing the programs directly creates a unique relationship between USDA and its AmeriCorps participants.

FmHA and RDA AmeriCorps projects propose to engage participants to assess the effectiveness of various forms of outreach for expanding FmHA programs among socially and economically disadvantaged farmers and in developing locally-based implementation plans for the RDA's Empowerment Zone and Enterprise Community initiative. Your memorandum stresses the *bona fide* need of FmHA and RDA for the loan outreach reports and

Empowerment Zone/Enterprise Community implementation plans that will be developed as a product of this program. The Corporation, however, has indicated to my staff that, to be consistent with Corporation regulations and the terms of the grant agreement between the Corporation and USDA, the participants must be involved in direct community service, i.e., while the participants may produce "field reports" containing information chronicling their experiences, which information may be used by FmHA and RDA to develop a report, the focus must be on the direct service, not on the reports.

FmHA and RDA have asked whether they can use FY 1994 appropriations to fund the participation agreements. The *bona fide* needs rule prohibits agencies, without statutory authority, from obligating an appropriation made for the needs of a limited period, in this case FY 1994, for the needs of a prior or subsequent period. 31 U.S.C. § 1502(a). This rule applies to contracts, grants, and cooperative agreements. See Matter of Small Business Administration Questions about Funding of Small Business Development Centers, B-229873 at 4 (Nov. 29, 1988).

In this situation, where USDA is carrying out a national service program directly and is receiving assistance from the Corporation under the Act, the nature of the relationship between USDA and the participants is *sui generis*. The Act makes clear that the participants generally are not considered Federal employees. Nor is the relationship that of a contract. Instead, the relationship envisaged by the Act is most akin to that of an assistance relationship that contemplates substantial involvement by USDA. While the service performed by the AmeriCorps participants funded with a USDA appropriation must be consistent with the purpose for which the appropriation was made, the primary purposes of the relationship with the AmeriCorps participants is to benefit the participants by improving their educational motivation and achievement, citizenship skills, teamwork, and problem solving skills, and to benefit the communities in which the service is performed by getting things done. Thus, the *bona fide* need of FmHA and RDA in FY 1994 is to provide immediately "assistance" to the AmeriCorps participants by entering into the participation agreements. See B-229873.

cc: Michael Dunn, FmHA  
Wilbur Peer, RDA