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**OA/ID Number:** 24236  
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**Folder Title:**  
USDA [Department of Agriculture]/AmeriCorps-Displacement Issue

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**BY FAX (202 702-4614) and REGULAR MAIL**

September 12, 1995



Mr. Joel Berg  
USDA Director of National Service  
AG Box 1301  
14th & Independence Ave., SW  
Washington, D.C. 20250-1301

Re: NRCS Request for Waiver of "Six-Month" Policy.

Dear Mr. Berg:

This is in response to your letter dated September 7, 1995, which enclosed a request from your NRCS site seeking permission to enroll as AmeriCorps Members two individuals who recently completed temporary employment with NRCS as summer aides.

The Corporation's policy on displacement reflects the intent of National and Community Service Act of 1990, as amended, that national service participants not displace employees or positions. 42 U.S.C. § 12637. To that end, the Corporation's policy generally prohibits grantee/subgrantee organizations from enrolling individuals who were employed by the organization in the six months prior to enrollment.

According to your letter and attachments, you seek clarification regarding two individuals who formerly served as summer aides for NRCS as temporary intermittent employees. Based on the information contained in the Memorandum dated August 25, 1995 from Roger L. Bensey to Paula Cole Jones, we are satisfied that the enrollment of the two individuals in question will not cause displacement. We have therefore determined that a waiver of the application of the six-month policy is warranted in this instance.

Sincerely,

A handwritten signature in dark ink that reads "Hank Oltmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Hank Oltmann  
Senior Program Officer

1201 New York Avenue, NW  
Washington, DC 20525  
Telephone 202-606-5000

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National Senior Service Corps



United States  
Department of  
Agriculture

Office of  
Communications

Washington, D.C.  
20250-1300

September 7, 1995

Terry Russell  
General Counsel  
Corporation for National and Community Service

Joel Berg  
USDA Director of National Service  
AG Box 1301  
14th & Independence Ave., S.W.  
Washington, D.C. 20250-1301

Dear Mr. Russell

Enclosed is a request from one of our Natural Resources and Conservation Service (NRCS) sites asking the Corporation for National and Community Service (CNCS) to clarify how the "six month" rule applies to the enrollment of individuals who have recently been in temporary Federal programs. Is it permissible for the program to enroll the identified individuals in an AmeriCorps program? The description of the programs in which the individuals participated seems to conform to the circumstances you outlined to Mr. Ron De Munbrun of my staff when you discussed implementation of the "six month" rule.

If you wish to discuss this matter further please contact Ron De Munbrun at (202) 690-3894. As we are well along in our recruitment process, a speedy decision by you office on this request would be most appreciated.

Cordially,

  
Joel Berg

cc: P. Jones

UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

NATURAL RESOURCES  
CONSERVATION  
SERVICE

75 High Street Rm 301  
Morgantown, WV 26505  
(304) 291-4152

**SUBJECT:** AmcriCorps/USDA

**DATE:**

August 25, 1995

**TO:** Paula Cole Jones  
Program Manager

**FILE CODE:**

360

This is a request to the Corporation for National Service for a waiver of the restriction on enrolling AmeriCorps members who worked during the summer with NRCS as intermittent or temporary summer aides. NRCS has utilized intermittent summer aides in West Virginia on special one time efforts that are not continuous work done by NRCS and as such enrolling one of these persons at a different location with an AmeriCorps/USDA project would not displace any employee nor any work NRCS does. These summer aides are temporary intermittent employees. They do not have permanent status as either full-time or part-time employees. Many are college students who utilize this temporary employment to support their educational expenses-a primary objective of the AmeriCorps program. To deny these candidates the opportunity to participate would in fact, penalize the very individuals AmeriCorps was developed to assist.

We have received applications for national service membership from two of these aides and would like to consider them as potential AmeriCorps members. These persons are skilled, and willing to serve, and already have a good work ethic and idea of natural resource conservation work. We are requesting that the Corporation grant a waiver in these cases as these are non-status, non-permanent, temporary activities with a known termination date, whose enrollment in AmeriCorps would in no way displace any other employee, temporary or permanent.

Thank you for your consideration of this request and all that you do in the National Service Program through the AmeriCorps/USDA projects. If you have questions or concerns please call me or Patrick Bowen, Project Director at 304-291-4152 ext. 169.

  
Roger L. Bensey  
State Conservationist

cc: Patrick Bowen  
Rick Heaslip  
Prin. Staff

August 14, 1995

MEMORANDUM FOR JOEL BERG

FROM: RON DE MUNBRUN *RMD*

SUBJECT: Waiver of the Rule Restricting the Enrollment in AmeriCorps Programs of Recent Federal Employees - "Six Month Rule"


I just spoke with Terry Russell, General Counsel for the Corporation for National Service (CNS) concerning the "Six Month Rule" and how, if at all, it might be waived. Mr. Russell indicated that the rule might (I emphasize MIGHT) be waived under certain circumstances. We both agreed that because the rule is intended to prevent the displacement of Federal employees any waiver must receive careful scrutiny and that final approval should come from the Corporations Grants and Contract Office (Mike Kenefic).

In our discussion we also developed a few scenarios to explain specific instances in which a waiver might or probably would not be granted:

1. A waiver might be granted if the person in question was payrolled in a Federal program or position that is designed to be temporary in nature, such as a intern program or a position with a not to exceed date. The key element is that the person is in a position that has been, is and always will be considered a temporary position.
2. A waiver probably would not be granted if the person in question was payrolled in a Federal program or position that is designed to be a permanent position. In such a program the position does not have a specific not to exceed date and the person in that position could be in it indefinitely. The key element is that the person not the position is temporary.
3. A waiver also would not be granted if the person in question was payrolled in a Federal program or position EVEN IF THAT POSITION MEETS THE DESCRIPTION PROVIDED IN ITEM # 1, if the person will be doing essentially the same work they did as an AmeriCorps member and the same type of work they will be done in a new AmeriCorps term of service. This applies particularly to USDA Rural Development

team members who have reached the 12 month and/or living allowance limits and would be working in another Federal program during essentially the same work as they did AmeriCorps members, while waiting for a new term of service to start where they will continue the same type of work. Such people in "bridge" jobs probably would not be approved to enroll in a second term of service.

Hopefully, these examples will provide more precise guidance to our program managers. I will forward this memo to them, emphasizing the fact that all waiver requests must be put in writing to CNS and that there is no guarantee that any request will be approved regardless of how closely it follows anyone of the above examples.

To: File  
From: Frank Trinity   
Date: February 7, 1995  
Re: Allegation of displacement made by Sonia Forry

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For the past seven years, Sonia Forry has been employed on a seasonal basis from mid-June through Labor Day at an information center on the Garden State Parkway operated by the Cape May County Chamber of Commerce. In January 1995, Ms. Forry received a letter from the Chamber's Executive Director, Robert C. Patterson, stating that the Chamber had obtained two AmeriCorps Members and that the information center position would not be available to her for the 1995 season. Ms. Forry believes that the AmeriCorps position is funded through the U.S. Department of Agriculture.

Ms. Forry has contacted her Congressman, Frank Lobiando, who sent her a copy of the National Service Act.

Ms. Forry has contacted a Member of the Board of Directors of the Chamber of Commerce who has promised to look into the matter.

When I asked Ms. Forry if the Chamber of Congress might assert that there was some reason other than the availability of the AmeriCorps Member for her release, she stated that there had been some friction last summer with the information center's office manager. She characterized this as minor and emphasized that the January 1995 release letter from Robert Patterson mentioned only the availability of the AmeriCorps Member as a basis for the release.

Ms. Forry stated that she would send me a copy of the January 1995 release letter from Robert Patterson.

The facts as asserted by Ms. Forry appear to represent a potential violation of the nondisplacement provision of the Act, which states that "An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this subchapter". 42 U.S.C. § 12637(b)(1).

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Corporation for National Service  
Office of the General Counsel  
1201 New York Avenue, N.W.  
Suite 8200  
Washington, D.C. 20525



Fax Number: (202) 565-2796

Telefax Message:

Date: 2/24/95

For: Joel Berg

Office: USDA

Telephone: 720-6350

Fax: 720-4614

This transmission consists of this cover sheet and 1 page(s).

From: Frank Trinity

Comments: I received this letter today re  
allegation of displacement in New Jersey.

If there are any problems with this transmission, please call (202) 606-5000,  
ext. 256.

1201 New York Avenue, NW  
Washington, DC 20525  
Telephone 202-606-5000

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# CAPE MAY COUNTY Chamber of Commerce



P.O. Box 74

Phone: (609) 465-7181  
FAX: (609) 465-5017

Exit 11 Garden State Parkway  
Cape May Court House, New Jersey 08210-0074

January 3, 1995

Sonia Forry  
2085 Route 50 Box 121  
Tuckahoe, NJ 08250

Dear Sonia,

Received your Christmas Card and note and am glad to know you received your mug and candies; hope you enjoyed the candy and had a good holiday from school.

As you probably know, we have been fortunate to receive two job positions from the Americorps Program. I plan on using one of these people at the Ocean View Information Center earlier in the spring season full time to represent the Chamber. As you're aware, the traffic volume and tourist inquiry demand gets heavier every year starting in March. Since we will be covering full time at Ocean View from March on I cannot justify another full time position later on. So it might be in your best financial interest to start early lining up a full time summer job for yourself.

We are hopeful that having a Chamber of Commerce representative at Ocean View early will help overcome much of the mix-up and confusion that has happened in the past couple years with who is covered and who isn't covered with brochure distribution, hotlines, etc.

While all plans are subject to change I feel it only fair to let you know now that we are planning and hoping to have a full time employee in Ocean View sometime in March which would eliminate your full time position in July and August.

Thank you for your past years of dedicated service to the Chamber at Ocean View and best wishes for the New Year.

Sincerely,

Robert C. Patterson, Jr.  
Executive Director

rlw

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