

■ 25. Amend § 102–117.355 by revising paragraph (b) to read as follows:

§ 102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?

* * * * *

(b) Provides assistance to your agency with the requirement to report your transportation activity to GSA (see § 102–117.345).

§ 102–117.360 [Amended]

■ 26. Amend § 102–117.360 by removing “Office of Transportation and Personal Property (MT)” and adding “Office of Travel, Transportation and Asset Management (MT)” in its place.

[FR Doc. 2010–20604 Filed 8–19–10; 8:45 am]

BILLING CODE 6820–14–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XXV

RIN 3045–AA51

AmeriCorps National Service Program

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (“the Corporation”) is issuing rules to implement changes to the operation of the National Service Trust as directed by the Edward M. Kennedy Serve America Act (“the Serve America Act” or “SAA”). In addition, this rule provides flexibility for exceptions to the 80 percent cost reimbursement requirement for Senior Companion and Foster Grandparent programs based on hardship. Finally, this rule reorders and renumbers certain parts of the existing regulations, adds new definitions, and makes several minor technical edits.

DATES: This final rule is effective September 20, 2010, except for the amendments to §§ 2522.220, 2522.230, 2522.235, and 2522.240, which are effective August 20, 2010.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this rule in an alternate format.

SUPPLEMENTARY INFORMATION:

List of Topics

- I. Background
- II. Public Comments
- III. Specifics of Final Rule and Analysis of Comments

- A. Definitions
- B. Eligibility to Receive an Education Award
- C. Successful Completion of a Term of Service
- D. Partial Awards for Release for Compelling Personal Circumstances
- E. Limitation on Amount of Award Disbursed to Institution of Higher Education
- F. Use of Education Award for a Program of Education Approved by the Secretary of Veterans Affairs
- G. Payment of Accrued Interest
- H. Amount of AmeriCorps Education Award
- I. Amount of Silver Scholar and Summer of Service Education Awards
- J. Limitation on Value of Education Awards Received
- K. Impact of Aggregate Value of Education Awards Received
- L. Transfer of Education Awards
- M. Periods of Availability for Silver Scholar, Summer of Service, and Transferred Education Awards
- N. Certifications of Successful Completion of Terms of Service
- O. Effect of Erroneous Certifications of Successful Completion of Terms of Service
- P. Public Service Loan Forgiveness and AmeriCorps
- Q. Term Limits for AmeriCorps State and National
- R. Selection Criteria Sub-Categories for AmeriCorps State and National
- S. Applications for the Same Project
- T. Pre-Approval of Formula Programs
- U. Hardship Waiver Permitted for Cost Reimbursement Requirement for Senior Companion and Foster Grandparent Programs.
- IV. Summary of Redesignations
- V. Effective Dates
- VI. Non-Regulatory Issues

I. Background

On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act). The Serve America Act reauthorizes and expands national service programs administered by the Corporation by amending the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*) (NCSA) and the Domestic Volunteer Service Act (42 U.S.C. 4950 *et seq.*) (DVSA). The Corporation engages more than five million Americans of all ages and backgrounds in service each year, including approximately 85,000 AmeriCorps members, nearly 500,000 Senior Corps volunteers, 1.5 million Learn and Serve America students, and three million additional community volunteers mobilized and managed through agency programs.

Section 6101 of the Serve America Act authorizes the Chief Executive Officer of the Corporation to issue such regulations as may be necessary to carry out the amendments required under the

Act. To fulfill that responsibility, on September 10, 2009, the Corporation issued an interim final rule to implement time-sensitive changes to the Corporation’s AmeriCorps State and National, Senior Corps, and Learn and Serve America program regulations. (74 FR 46495). The changes resulting from the interim final rule were required as a result of amendments to the NCSA and DVSA by the Serve America Act, which took effect for most purposes on October 1, 2009.

In that rule, we stated our intention to engage in full notice and comment rulemaking to implement those amendments mandated by the Serve America Act that did not require immediate regulatory action. This rulemaking is the Corporation’s second in a series to implement the amendments mandated by the Serve America Act. This rule primarily makes amendments and additions to existing regulations regarding the National Service Trust, including limitations on education award receipt, the available uses of an education award, eligibility to receive an education award, and the amount of an education award. This rule also addresses the limitation on the number of terms an individual may serve in an AmeriCorps State and National program. This rule adds flexibility in managing match requirements for Senior Companion and Foster Grandparent programs facing hardship. Finally, this rule makes several technical corrections inadvertently omitted from the interim final rule, including an amendment to the provision on pre-approval of Subtitle C formula programs, amendments to the AmeriCorps State and National selection criteria, and an amendment to include a reference to the Department of Education’s new Public Service Loan Forgiveness Program.

II. Public Comments

On February 23, 2010, the Corporation published a proposed rule in the **Federal Register** (75 FR 8013) with a 60-day comment period. In addition to accepting comments in writing through e-mail and through <http://www.regulations.gov>, the Corporation held four conference calls. During the public comment period, the Corporation received over 400 comments on the proposed rule from grantees, the Corporation’s Inspector General, and other interested parties. Over half of the comments received recommended changes to the rule that are not currently authorized by statute, including expanding the types of people who can transfer and receive education

awards. The Corporation also received numerous comments on items not within the scope of this rulemaking, such as comments on the Silver Scholar program and the amount of the Foster Grandparent stipend. While these comments are not addressed here, the Corporation will take them under consideration in the future.

The remaining comments expressed views on the merits of particular sections of the proposed regulations, as well as some broader policy statements and issues. Acknowledging that there are strong views on, and competing legitimate public policy interests relating to, issues in this rulemaking, the Corporation has carefully considered all of the comments on the proposed regulations.

The Corporation has summarized below the major comments received on the proposed regulatory changes, and has described the changes we made in the final regulatory text in response to the comments received. In addition to the more substantive comments below, the Corporation received some editorial suggestions, some of which we have adopted. The Corporation has also made minor editorial changes to better organize the regulatory text.

III. Specifics of the Final Rule and Analysis of Comments

As discussed in more detail below, the final rule:

- Amends the definitions of “education award” and “term of service,” and adds definitions for “AmeriCorps education award,” “Silver Scholar education award,” “Summer of Service education award,” “approved Silver Scholar position,” “approved Summer of Service position,” “G.I. Bill approved program,” and “economically disadvantaged youth”;
- Adds individuals who complete approved Silver Scholar and Summer of Service positions as eligible to receive an education award;
- Adds a requirement for programs to complete an end-of-term evaluation to determine whether an individual successfully completed the term of service;
- Clarifies that an individual must have served satisfactorily prior to being released for compelling personal circumstances in order to receive a partial award;
- Removes consideration of an individual’s veterans’ benefits when determining the maximum amount of an individual’s education award that may be disbursed to an institution of higher education;
- Adds to the list of uses for an education award use to pay expenses

incurred in enrolling in an educational institution or training establishment approved by the Secretary of Veterans Affairs for offering programs of education, apprenticeship, or on-the-job training for which educational assistance may be provided by the Secretary of Veterans Affairs;

- Includes individuals who successfully complete service in a Silver Scholar program as eligible for the payment of accrued interest on qualified student loans;
- Amends the amount of a full-time AmeriCorps education award to be equal to the maximum amount of a Federal Pell Grant for the year in which the AmeriCorps position is approved;
- Adds sections stating the amount of a Silver Scholar education award (\$1,000) and Summer of Service education award (\$500);
- Adds limitation that no individual may receive more than the aggregate value of two full-time education awards and describes how an education award’s value is determined;
- Adds a new part on transferring education awards, including limitations on who may transfer, who may receive a transferred award, and the processes for transferring, accepting, rejecting, and revoking a transferred award;
- Clarifies the periods of availability for Silver Scholar education awards (7 years), Summer of Service education awards (10 years), and transferred education awards (10 years);
- Adds a requirement for programs to certify that an individual successfully completed a term of service in order to receive an education award;
- Adds a section on the Corporation’s recourses in cases where a grantee makes an erroneous certification that an individual successfully completed a term of service;
- Adds flexibility to permit an individual to credit service time towards receiving an education award and earning Public Service Loan Forgiveness through the Department of Education;
- Increases the limit of terms one may serve in AmeriCorps State and National from two to four;
- Removes selection criteria sub-categories and relative weights for AmeriCorps State and National grant competitions;
- Removes the restriction on submitting more than one application for the same project at the same time and clarifies that the Corporation will not provide more than one grant to the same project in the same fiscal year;
- Removes the requirement that State Commissions pre-select formula

programs prior to submitting a formula application; and

- Adds an option for a hardship waiver for the Senior Companion and Foster Grandparent cost-reimbursement requirement.

A. Definitions (§§ 2510.20, 2525.20)

The National Service Trust is an account in the U.S. Treasury authorized to disburse education awards to national service participants. Prior to passage of the Serve America Act, the Corporation was authorized to disburse one type of education award from the National Service Trust—a national service education award, also known as a Segal AmeriCorps Education Award, available upon successful completion of a term of service in an approved AmeriCorps position. An “approved AmeriCorps position” is one of the positions described in Section 123 of the Act, including a position in AmeriCorps State and National, AmeriCorps NCCC, AmeriCorps VISTA, and the newly authorized ServeAmerica Fellowship program.

The Serve America Act authorizes two new types of education awards: (1) A Silver Scholar education award of \$1,000, available upon successful completion of a term of service in an approved Silver Scholar position; and (2) a Summer of Service education award of \$500 (with authority for awards up to \$750 for economically disadvantaged youth), available upon successful completion of a term of service in an approved Summer of Service position. Silver Scholar and Summer of Service education awards are available for use for the same purposes as AmeriCorps education awards: to repay qualified student loans, to pay for current educational expenses at an institution of higher education, and to pay for the cost of attending a program of education approved by the Secretary of Veterans Affairs.

Several commenters sought clarification regarding the nature of the Summer of Service program, as the Corporation has supported multiple initiatives referred to as “Summers of Service.” To clarify, an approved Summer of Service position is one supported through a Learn and Serve America grant authorized and funded under Subtitle B of Title I of the NCSA. For more information on the Summer of Service program, see http://www.learnandserve.gov/about/programs/community_based.asp.

To align with the amended statute, this rule amends § 2525.20 by adding three separate definitions for “AmeriCorps education award,” “Silver

Scholar education award,” and “Summer of Service education award.”

Each of these awards is based upon successful completion of a term of service in an *approved* position. For a position of any type to be considered “approved,” the Corporation must have agreed to provide a corresponding education award upon successful completion of a term of service in that position. This rule amends § 2510.20 by adding definitions to clarify that in order for a Summer of Service or Silver Scholar position to be considered *approved*, it must be approved by the Corporation for the receipt of a Silver Scholar or Summer of Service education award, respectively.

A term of service in an approved Silver Scholar position must be for at least 350 hours during a period of one year. A term of service in an approved Summer of Service position must be for at least 100 hours “during the summer months.” To clarify that what constitutes a term of service will vary depending upon the program, this rule amends the definition of “term of service” in § 2525.20 to align with the NCSA by providing separate descriptions for terms of service in approved AmeriCorps, Silver Scholar, and Summer of Service positions.

We received many requests for additional clarification on the Silver Scholar and Summer of Service programs, including whether there will be limitations on the number of terms an individual may serve in each program and how the Silver Scholar program will interact with other programs. Specific rules for these programs were not a part of this rulemaking; the Corporation may undertake separate rulemakings on these topics in the future.

As stated above, a Summer of Service education award will generally be \$500. However, the NCSA authorizes the Corporation to establish a Summer of Service award of \$750 for “economically disadvantaged youth.” The Corporation defines “economically disadvantaged youth” for the purposes of the larger Summer of Service education award as a child who is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act. This rule amends § 2525.20 to add this definition.

The Corporation received several comments questioning the Corporation’s definition of “economically disadvantaged youth,” including comments that such a definition would exclude home-schooled children and middle school youth who do not sign up for free lunch. Using the eligibility guidelines for participation in a free

lunch or breakfast program under the Richard B. Russell National School Lunch would not exclude home-schooled students or students who do not sign up for a free lunch or breakfast. A child need not actually be enrolled in a school-based free lunch or breakfast program to qualify for the larger Summer of Service education award. The definition means only that the eligibility standards of such a program will be used to determine whether a child qualifies for a larger education award.

The proposed rule defined an “economically disadvantaged youth” as one who is eligible for free or reduced lunch *and* breakfast. Upon further consideration, the Corporation has amended the definition in the final rule to an individual who is eligible for free or reduced lunch *or* breakfast.

While the Corporation has the authority to establish a larger award for economically disadvantaged youth, the Corporation has not elected to use this authority in the first year of funding Summer of Service programs.

B. Eligibility To Receive an Education Award (§ 2526.10)

The Serve America Act created two new types of education awards: Silver Scholar education awards and Summer of Service education awards, for \$1,000 and \$500 respectively, available upon successful completion of an approved Silver Scholar or Summer of Service position. This rule amends § 2526.10 to include individuals who successfully complete terms of service in approved Silver Scholar or Summer of Service positions as eligible to receive an education award from the National Service Trust.

Previously, the list of eligibility criteria to receive an education award in § 2526.10 described the eligibility criteria to serve in AmeriCorps State and National, AmeriCorps NCCC, and AmeriCorps VISTA, including age and education criteria that would exclude individuals in Summer of Service positions, which are available for “youth who will be enrolled in any of grades 6 through 12 at the end of the summer” (42 U.S.C. 12563(c)(8)). To align with the amended statute, this rule amends § 2526.10 to defer to the eligibility criteria of individual programs for program-specific criteria.

Under this rule, for an individual to be eligible to receive an education award, the organization responsible for the individual’s supervision must certify that the individual: (1) Met the applicable eligibility requirements for the approved national service position, approved Silver Scholar position, or

approved Summer of Service position, as appropriate; (2) successfully completed the term of service in the AmeriCorps, Silver Scholar, or Summer of Service program; and (3) is a citizen, national, or lawful permanent resident alien of the United States.

C. Successful Completion of a Term of Service (§ 2526.15)

Section 146 of the NCSA directs the Corporation to determine a process by which an organization responsible for the supervision of a national service participant may determine whether the participant successfully completed a term of service. This rule adds a new § 2526.15 describing that process. Under this rule, organizations supervising AmeriCorps State and National participants will continue to use the existing process detailed at § 2522.220(d).

For Summer of Service and Silver Scholar programs, the organization is required to conduct an end-of-term evaluation for each participant to determine whether the individual successfully completed the term of service. To determine whether an individual successfully completed a term, the program must examine whether: (1) The individual completed the required number of service hours for the respective term of service; (2) the individual performed satisfactorily on assignments, tasks, or projects; and (3) the individual met any other performance criteria as communicated to the member by the organization. What is considered “satisfactory performance” is within the discretion of the program.

For the purpose of this requirement, certification that an individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation. A certification of successful completion will not, however, suffice as documentation of hours served.

One commenter noted that the proposed language of § 2526.15 is not explicit that an individual must satisfy all three elements of the evaluation in order to be considered to have successfully completed a term of service.

The Corporation has amended § 2526.15 to clarify that a certification of successful completion necessarily encompasses a determination that the individual completed the service hour requirement, performed satisfactorily, and met any other performance criteria set by the program.

The Corporation received several requests for standard definitions of “satisfactory” and “unsatisfactory.” To

afford programs the necessary flexibility to supervise and manage their members, the Corporation declines to set a standard for what is considered "satisfactory."

The proposed rule inadvertently included AmeriCorps VISTA and AmeriCorps NCCC in the above certification process. The Corporation uses its own process to determine whether a VISTA or NCCC member has successfully completed a term of service; the above rules do not apply to VISTA or NCCC.

D. Partial Awards for Release for Compelling Personal Circumstances (§§ 2526.20–25)

Section 147 of the NCSA authorizes the Corporation to make education awards in five different amount categories: (1) An amount for successful completion of a full-time approved national service position; (2) an amount for successful completion of a part-time approved national service position; (3) an amount for partial completion of service, available upon release for compelling personal circumstances from an approved national service position; (4) an amount for a Silver Scholar education award for successful completion of an approved Silver Scholar position; and (5) an amount for a Summer of Service education award for successful completion of an approved Summer of Service position. Partial awards are described *only* in the context of release for compelling personal circumstances from an *approved national service position*.

In describing types of service positions in section 146, the Act distinguishes between *approved national service positions* (which are described in section 123 to include AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and ServeAmerica Fellows), *approved Silver Scholar positions*, and *approved Summer of Service positions*. The Act does not provide for a pro-rated award for a release for compelling personal circumstances from an approved Silver Scholar or Summer of Service position.

This rule amends § 2526.20 and adds a new § 2526.25 to clarify that partial awards will not be available for individuals who are released early from Silver Scholar or Summer of Service positions, even for compelling reasons. We received several comments recommending that a release for compelling personal circumstances be permitted for Silver Scholars and Summer of Service positions. As stated above, there is no authority for a partial award for a release for compelling

personal circumstances from a Silver Scholar or Summer of Service position.

This rule also amends § 2526.20 to reflect the statutory requirement that an individual serving in an approved AmeriCorps position must have performed satisfactorily before being released for compelling personal circumstances in order to receive a partial education award.

E. Limitation on Amount of Award Disbursed to Institution of Higher Education (§§ 2528.30–40)

Prior to the effective date of the Serve America Act, under section 148(c)(6) of the NCSA, the Corporation's disbursement from an individual's education award for any period of enrollment at an institution of higher education could not exceed the difference between that individual's cost of attendance for that period of enrollment and the sum of (1) the individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act and (2) the individual's veterans' benefits as defined under section 480(c) of the Higher Education Act. The Serve America Act amended section 148(c)(6) to eliminate consideration of an individual's veterans' benefits in this manner. This rule amends §§ 2528.30 and 2528.40 to align with amended section 148(c)(6) by removing any consideration of an individual's veterans' benefits when determining the maximum amount of the individual's education award that may be disbursed to an institution of higher education.

F. Use of Education Award for a Program of Education Approved by the Secretary of Veterans Affairs (§§ 2528.10, 60–80)

The Serve America Act amended section 148 of the NCSA to add a fifth available use for an education award. Under the amended law, the education award is available "to pay expenses incurred in enrolling in an educational institution or training establishment that is approved under chapter 36 of title 38, United States Code, or other applicable provisions of law, for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs." (42 U.S.C. 12604(a)(4)). This rule amends § 2528.10 to add this use to the list of available uses, and adds rules on the process for using the award for this purpose. Benefits offered under chapter 36 of title 38, U.S.C., were authorized under the Montgomery G.I. Bill and the Post 9/11 G.I. Bill. This rule adds a definition for "G.I. Bill approved programs."

This rule requires that the institution or training establishment at which an individual requests to use an education award certify under penalty of law that the amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training program offered by that institution or training establishment. Further, the institution or training establishment must certify under penalty of law that the course or program for which the individual is requesting to use the education award is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs.

The Department of Veterans Affairs is the agency responsible for approving courses or programs of education under chapter 36 of title 38, U.S. Code, and the Corporation defers to the decisions made by the State approving agencies and the Secretary of Veterans Affairs regarding approving—or withdrawing approval—of a program of education. The Corporation will only disburse funds to an institution or establishment if it verifies that a course or program of education has received the requisite approval.

Unlike G.I. education benefits, which may be disbursed directly to an individual, under this rule, the education award will only be disbursed directly to the educational institution or training establishment.

If an individual for whom the Corporation has disbursed an education award withdraws or fails to complete the period of enrollment at an educational institution or training establishment in a program of education approved by the Secretary of Veterans Affairs, this rule requires the educational institution or training establishment to provide a pro-rated refund to the Corporation. The Corporation will provide more detailed guidance on the refund process during implementation.

Please Note: An individual will begin being able to use the Corporation's online systems to request the use of an award at a G.I. Bill approved program beginning mid-August, 2010 or 30 days following the publishing of this regulation, whichever is later.

G. Payment of Accrued Interest (§ 2529.10)

This rule amends § 2529.10, which previously provided for interest forbearance to individuals serving in approved AmeriCorps positions, to clarify that individuals who

successfully complete terms of service in approved Silver Scholar positions may also be eligible for payments of interest accrued on qualified student loans while serving. The rule does not include Summer of Service positions, as Summer of Service positions are reserved for rising 6th through 12th graders who, having not yet enrolled in an institution of higher education, will not yet have incurred qualified student loans.

The Serve America Act also amended section 123 by expanding the list of positions considered to be approved national service positions to include “a position involving service in the ServeAmerica Fellowship program.” The term “approved national service position” is used interchangeably with the term “approved AmeriCorps position.” Therefore, an individual who serves in a ServeAmerica Fellowship position will be eligible for the payment of accrued interest on qualified student loans upon successful completion of a term of service.

H. Amount of AmeriCorps Education Award (§ 2527.10)

Upon successful completion of a term of service in an approved AmeriCorps position, including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and ServeAmerica Fellows, an individual is eligible to receive an AmeriCorps education award from the National Service Trust. Prior to the passage of the Serve America Act, the amount of a full-time AmeriCorps education award was set in law at \$4,725.

The Serve America Act amended section 147 of the NCSA by changing the amount of a full-time national service education award to be “equal to the maximum amount of a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1071a) that a student eligible for such Grant may receive in the aggregate * * * for the year for which the national service position is approved by the Corporation.” This rule amends § 2527.10 to conform to the changes in the NCSA in the amount of the full-time award.

The amount of the Pell Grant upon which AmeriCorps education awards will be based may change each year. Thus, the amount of an AmeriCorps education award may also change annually. To determine the amount of an AmeriCorps education award, the Corporation will use the amount of the Pell Grant as of October 1 (the first day of the Federal fiscal year) in the fiscal year in which the national service

position is approved. For example, if a national service position is *approved* in September of 2010, the amount of the education award will be based on a full-time amount of \$5,350—the amount of the Pell Grant as of October 1, 2009 (the first day of fiscal year 2010).

The trigger date for determining the amount of an education award for a particular national service position is the date that position is *approved*—not the date the individual begins serving in a national service position. Not all positions that *begin* in a fiscal year will receive an education award based on the amount of the Pell Grant in that fiscal year.

In accordance with the national service laws, funding for education awards is obligated on a different schedule for AmeriCorps VISTA, AmeriCorps NCCC, and AmeriCorps State and National. What follows is a detailed discussion on how the approval date for a national service position is determined for the purposes of establishing the amount of an education award.

For AmeriCorps VISTA, a position is considered to be approved at the time the Corporation enters into an enforceable agreement with an individual, signified by the individual's taking the VISTA oath of service. (42 U.S.C. 4954(c)). For an AmeriCorps VISTA position, the education award amount is equal to the amount of a Pell Grant on October 1 of the fiscal year in which the VISTA takes the oath of service. For example, a VISTA who takes the oath on any date between October 1, 2009, and September 30, 2010, is eligible for a full-time award amount of \$5,350—the amount of the Pell Grant as of October 1, 2009.

For AmeriCorps NCCC, a position is considered to be approved at the time the Corporation enters into an enforceable agreement with an individual, signified by the individual's signing of an AmeriCorps NCCC member agreement. (42 U.S.C. 12606(a)(1)(A)(i)). For an AmeriCorps NCCC position, the education award amount will be equal to the amount of a Pell Grant on October 1 of the fiscal year in which the AmeriCorps NCCC member signs the member agreement. Therefore, an individual who signs an AmeriCorps NCCC member agreement on any date between October 1, 2009, and September 30, 2010, will receive an award based on a full-time award amount of \$5,350—the amount of the Pell Grant as of October 1, 2009.

For AmeriCorps State and National, by law, a position is considered to be approved at the time the Corporation executes a grant used to support the

AmeriCorps member—not the date an AmeriCorps member takes an oath, signs an agreement, or begins service. (42 U.S.C. 12606(a)(1)(A)(ii)). AmeriCorps State and National grants are generally made during the spring and summer, i.e., in the latter half of a fiscal year. As a result, unlike AmeriCorps NCCC and AmeriCorps VISTA members (who are eligible for the new amount of the award as of October 1), the earliest point at which an AmeriCorps member may begin serving in a position funded by those grants may be closer to the end of a fiscal year.

For example, if an AmeriCorps State program receives a grant and an allotment of AmeriCorps positions on August 1, 2010, and enrolls a member using fiscal year 2010 grant funds on August 3, 2010, that member will receive an education award based on a full-time amount of \$5,350—the amount of the Pell Grant on October 1, 2009, the first day of the fiscal year in which the August 2010 grant was made. If the program then enrolls another member on October 10, 2010, that member will also receive an education award based on the \$5,350 amount—even though at that point a new fiscal year has begun, and the Pell Grant for fiscal year 2011 may have increased or decreased as of October 1, 2010. The determining factor is that the member position was approved by the Corporation in a grant awarded in fiscal year 2010.

Further, unlike an AmeriCorps NCCC or AmeriCorps VISTA member, whose approval date will closely correlate with the day the individual begins service, it is possible for an AmeriCorps State and National member beginning service in one fiscal year to be supported with funds from a grant made in a prior fiscal year. Therefore, it is possible for two AmeriCorps members starting service on the same day to be supported by two different grant awards made in two different fiscal years, resulting in two different approval dates and two different education award amounts.

For example, consider two programs with different member enrollment periods. Program A has an enrollment period of September 1, 2010 to August 30, 2011. Program B's enrollment period is September 15, 2010 to September 14, 2011. Both programs receive a grant award for the second year of their grant in the summer of 2011, and each enrolls a member on September 2, 2011. The member enrolling in Program A will be enrolling at the beginning of the enrollment period for that program year, and will receive an education award based on the amount of a full-time award on October 1, 2010. The member

enrolling in Program B will be enrolling at the end of the enrollment period for the **prior** program year, and will receive an education award based on the amount of a full-time award on October 1, 2009.

The Corporation received several comments expressing concern about the possibility of two members serving simultaneously but receiving different education award amounts. Specifically, these commenters noted that different education award amounts may give the appearance of inequity between members.

In the proposed rule, the Corporation included an example of a scenario under which a program enrolls two members on the same day using one slot from the prior year grant and one slot from the current year grant. While such a scenario is possible, it is unlikely to occur. However, it is likely that an AmeriCorps State and National member may start on the same day as an AmeriCorps VISTA member at the same service site. To mitigate a perception of inequity among members in any case, and to reduce confusion, it is essential for AmeriCorps programs—particularly those with AmeriCorps State and National members—to clearly communicate to each member, prior to the commencement of service, the amount of the education award being offered to the individual for successful completion of the term of service. Beginning with grants made in 2010, AmeriCorps State and National grant provisions will direct grantees to specify the amount of the education award being offered for successful completion of a term of service in the member service agreement.

One commenter recommended that the Corporation make the education award amount for a particular AmeriCorps position available to the member and the program through the MyAmeriCorps portal. The Corporation is developing its systems to provide this information through the MyAmeriCorps portal in the near future, but will also require programs to communicate this information to the member in the member service agreement.

It is important to remember that the Serve America Act went into effect on October 1, 2009. All positions approved prior to that date are eligible for awards based on a full-time amount of \$4,725. To learn more about the amount of the education award and how it is determined, visit the AmeriCorps Web site at http://www.americorps.gov/for_individuals/benefits/benefits_ed_award.asp.

I. Amount of Silver Scholar and Summer of Service Education Awards (§ 2527.10)

As previously discussed, the Serve America Act created two new types of education awards: Silver Scholar education awards and Summer of Service education awards. This rule amends § 2527.10 to include the Silver Scholar education award of \$1,000, available upon successful completion of a term of service of at least 350 hours in a Silver Scholar position.

This rule also amends § 2527.10 to include the Summer of Service education award of \$500, available upon successful completion of at least 100 hours in a Summer of Service position. The Corporation may authorize a Summer of Service education award of \$750 if the participant is an economically disadvantaged youth.

In the proposed rule, we stated that in order to authorize the increased award, the Corporation must receive a certification from the school with which the participant served that the participant meets the definition of “economically disadvantaged youth,” defined in this rule as a child that is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Upon further consideration, the Corporation is changing this certification requirement in the final rule, and will instead require verification from the school or organization with which the participant served.

Pro-rated education awards for an early release for compelling personal circumstances from a Silver Scholar or Summer of Service position are not available. If an individual fails to complete either type of term for any reason, the individual will not receive an award. And unlike the AmeriCorps education award described in the previous section, under the authorizing statute Silver Scholar and Summer of Service education awards will not vary in amount from one year to the next.

Summer of Service and Silver Scholar education awards may be used for the same purposes as AmeriCorps education awards, including paying for the cost of attendance or other current educational expenses at an institution of higher education, to pay expenses incurred in enrolling in an educational institution or training establishment approved by the Secretary of Veteran’s Affairs for programs of education, apprenticeship, or on the job training, and to repay qualified student loans.

J. Limitation on Value of Education Awards Received (§ 2526.50)

Prior to the passage of the Serve America Act, the national service laws limited individuals to receive an education award “only on the basis of the first and second * * * terms of service.” A term of service includes full-time, part-time, or less-than-part-time terms, terms in which the person served at least 15 percent of the term of service, and terms for which an individual was released for misconduct regardless of the amount of time served. Terms range in service hour requirements from 300 hours to more than 1,700 hours, but despite the contrast in the level of commitment required or the service opportunity presented, all terms were previously considered of equal value for the purposes of limiting the receipt of education awards.

The Serve America Act amended the national service laws to no longer limit the receipt of education awards based upon the number of terms served, but rather place the limit on the aggregate value of education awards received. Section 146(c) now states: “An individual may not receive, through national service educational awards and silver scholar educational awards, more than an amount equal to the aggregate value of [two] such awards for full-time service.”

The amended law allows for an individual to earn more than two education awards, so long as the aggregate value of all awards received does not exceed the aggregate value of two full-time national service education awards. Significantly, the law does not create an entitlement to receive the aggregate value of two full-time awards; rather, it prohibits an individual from receiving *more* than the aggregate value of two full-time awards. This rule amends § 2526.50 to align with the amended statutory language.

As previously discussed, the amount of a full-time education award is now tied to the amount of a Pell Grant in the year the position is awarded, and is likely to change each year. The Corporation does not interpret the amended statute to provide that the *value* of two full-time education awards for the purposes of this section is equal to the dollar amount of two full-time awards and would thus similarly change on an annual basis, providing a potentially unlimited number of service opportunities and education awards. Nor does the Corporation interpret this change as a means of ensuring that all national service participants receive an identical amount. Rather, the Corporation interprets the change in

focus from the number of terms served to the value of education awards received as a means of affording individuals serving in less-than-full-time terms more service opportunities. In other words, for the purposes of the limitation on education award receipt, *value* is distinct from *amount*.

The Corporation considers an education award to be the counterpart to successful completion of a term of service, and while the amount of that award might change, the service opportunity offered by a particular term of service is constant. The Corporation

interprets the “value” of a full-time education award to be representative of the service opportunity upon which it is based. Therefore, a limitation of two full-time education awards can be understood as a limitation of two full-time service opportunities.

In order to attribute a value to an award received on the basis of a static service opportunity in an environment in which the award amount may fluctuate annually, the Corporation will measure the *value* of any award amount relative to the amount of a full-time award in a given year. For the purposes

of this section, the *value* of an education award will be considered equal to the actual amount of the education award received divided by the amount of a full-time education award in the fiscal year the AmeriCorps or Silver Scholar position upon which the award is based was approved. Using this calculation, every award received will be considered to have a *value* between 0 and 1.

Although the *amount* of a full-time award may change, the *value* of a full-time award will always be equal to 1.

$$\text{Value of education award received} = \frac{\text{Amount of full-time award in fiscal year in which position upon which award is based was approved}}{\text{Amount of full-time award in fiscal year in which position upon which award is based was approved}}$$

For example, an individual who completed a part-time position approved in 2009 received an education award of \$2,362.50. The value of this award is the amount received, \$2,362.50, divided by \$4,725, the amount of a full-time award in the year the position was approved, or .5. Another individual completes a part-time position approved in 2010 and receives an education award of \$2,675. The value of this award is the amount received, \$2,675, divided by \$5,350, the amount of a full-time award in the year the position was approved, or .5. Using this calculation, the value of an award received for part-time service will always be equal to .5.

If an individual leaves a term of service for compelling personal circumstances and receives a pro-rated award, the value attributed to that award will be based on the amount actually received. For example, an individual was released for compelling personal circumstances from a full-time position approved in 2009 after serving 800 hours, and received a pro-rated

award of \$2,223.52. The value of this award is the amount of the award received, \$2,223.52, divided by, \$4,725, the amount of a full-time award in the year the position was approved, or .47. Another individual was released for compelling personal circumstances from a full-time position approved in 2010 after serving 800 hours, and received a pro-rated award of \$2,517.64. The value of this award is the amount of the award received, \$2,517.64, divided by \$5,350, the amount of a full-time award in the year the position was approved, or .47.

If an individual exits a term for cause and does not receive an education award, the amount received will be \$0, and therefore no value will be attributed to the individual for purposes of this section. However, an exit for cause will have an impact on the individual's eligibility to serve subsequent terms of service. A term exited for cause is considered a term of service for the purposes of term limitations for individual programs. For example, if an individual has already served one term of service in AmeriCorps NCCC, and

exits a second term in AmeriCorps NCCC for cause, the individual has exhausted the two terms of service one may serve in AmeriCorps NCCC. Additionally, if an individual is released for cause from an approved AmeriCorps position (including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and ServeAmerica Fellows), and the program determines in the end-of-term evaluation that the individual served **unsatisfactorily**, the individual may not serve a subsequent term in an approved AmeriCorps position.

For the purpose of transferred awards (discussed further in the section in this preamble on transfer), the value of the award received by a transferee will be the actual amount of the award received divided by the amount of a full-time award in the year the position for which the transferring individual received the award was approved. For example, if an individual receives an education award based on a term of service approved in 2010, and later transfers \$1,000 of that

award to a grandchild, the grandchild will be considered to have received an award value of .19, the result of dividing the amount received, \$1,000, by the amount of a full-time award in 2010, \$5,350. If the transferring individual revokes all or part of an award, the value considered to be received by the designated individual will be decreased accordingly. An individual who receives the aggregate value of two full-time awards through transferred awards may enroll in a national service position, but will not be eligible to receive any additional AmeriCorps or Silver Scholar education awards.

For purposes of this section, an award is considered to be received at the time it becomes available for an individual's use, and the fact that an individual does not use an award does not diminish its value. In addition, an individual who transfers an award will still be considered to have received the award, and the value of the award for the purposes of this section will not be decreased by the amount the individual transfers to a designated individual. For example, if an individual successfully completes two full-time terms of service, and the individual then transfers both full-time awards to a child, both the child and the transferring individual will be considered to have received two full-time awards.

This rule states that an individual may receive no more than the aggregate value of two full-time education awards. The aggregate value of awards received will be equal to the sum of the value of each national service education award received (awards received from terms of service in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, or ServeAmerica fellowships), including partial awards, the value of each Silver Scholar award received, and the value of each transferred award received. The calculation of the aggregate value does not include Summer of Service education awards, as these are excluded by law.

For example, an individual served a full-time term in 2008 and received an award of \$4,725. The same individual served a part-time term in 2009 and received an award of \$2,362.50. The individual enrolls in a minimum-time term in 2010 and receives an award of \$1,132.60. The value of the first award is 1 (\$4,725 divided by \$4,725), the value of the second award is .5 (\$2,362.50 divided by \$4,725), and the value of the third award is .21 (\$1,132.60 divided by \$5,350). The aggregate value of awards received is 1.71 (1 + .5 + .21).

The Corporation has received questions about whether awards received prior to the effective date of the Serve America Act will be included in determining the aggregate value of education awards received. The national service laws, as amended by the Serve America Act, do not differentiate between awards received prior to the effective date and those received subsequent to the effective date. All awards earned in the past will have a value attributed to them for the purposes of this section. Thus, under the proposed rule, if an individual has received two full-time education awards in the past, that individual is not eligible to receive another education award.

K. Impact of Aggregate Value of Education Awards Received (§§ 2526.55, 2527.10)

The proposed rule included a limitation that an individual would not be permitted to enroll in a subsequent term of service if successful completion of that term would result in receipt of an education award the value of which, when added to the aggregate value of awards previously received, would be greater than 2. The proposed rule provided that this would not prevent an individual from enrolling in a term of service for which the individual chooses to waive receipt of the education award.

The Corporation received many comments on this provision. Some commenters requested additional clarification on waiving an education award. Other commenters questioned the Corporation's proposal to require an individual who is not eligible to receive an entire education award for a particular term of service to waive the entire award in order to enroll in the term. Among the comments received, there was broad support for permitting an individual eligible to receive only a portion of an award to receive that portion upon successful completion of a term of service.

After further consideration, the Corporation agrees that an individual who is eligible to receive a portion of an education award should be able to receive that portion upon successful completion of the term of service. Under this rule, if an amount offered for a term of service has a value that, when added to the aggregate value of awards previously received, would exceed 2, the individual will receive a discounted award representing that portion of the award having a value for which the individual is eligible.

However, the Corporation will need time to implement this policy properly, including time to make necessary

upgrades to our systems. We estimate that our systems should be updated by November 1, 2010. Prior to that date, the Corporation will notify applicants in the MyAmeriCorps portal of the new rule, but will not provide individualized notice to applicants of the amount of award the individual may receive. Once the system changes have been implemented, an individual will be notified upon enrollment in a particular term of service of the aggregate value of awards the individual has previously received, and the maximum award amount the individual is eligible to receive for that term of service. The maximum amount the individual will receive upon successful completion will be either the amount of the award offered for that term of service, or a discounted amount having a value that, when added to the aggregate value of awards previously received, does not exceed 2—whichever is less. The discounted amount is determined by multiplying the value the individual is eligible to receive by the amount of a full-time award in the year the position is approved, and may be equal to zero dollars.

$(2 - \text{aggregate value of education awards received})$

\times
 $(\text{amount of full-time education award in year position was approved})$

This rule adds a new paragraph (g) to § 2527.10 describing how a discounted award amount is determined.

For example, consider an individual who has received an aggregate value of 1.26 awards who wishes to enroll in a full-time term offering an award with a value of 1. The individual is eligible to receive an award with a value of .74, and therefore upon successful completion will receive a discounted award amount of \$3,959 $((2 - 1.26) \times \$5,350)$.

If an individual had already received the value of two full-time education awards, the maximum discounted amount the individual is eligible to receive for successful completion of the term of service is \$0 $((2 - 2) \times \$5,350)$.

An individual must successfully complete the term of service in which the individual enrolls in order to receive the entire amount of the education award for which the individual is eligible. Section 147(c) of the Act states that if "an individual serving in an approved national service position is released [for compelling personal circumstances], the Corporation may provide the individual with that portion of the national service educational award approved for the individual that corresponds to the quantity of the term

of service actually completed by the individual.” An individual is only approved to receive an award amount for which the individual is eligible. If an individual is eligible to receive a discounted education award, and the individual leaves a term of service for compelling personal circumstances, the individual will receive a corresponding portion of the discounted award amount.

For example, consider an individual who enrolls in a term of service offering an award amount of \$5,350, but who is only eligible to receive an amount of \$3,000 based on the aggregate value of awards the individual had previously received. If this individual exits the term for compelling personal circumstances after serving 50% of the required service hours, the individual will receive \$1,500, or 50% of \$3,000—the discounted award amount for which the individual was approved.

Please Note: the option to elect to waive an education award was proposed in order to enable an individual to serve in a term of service offering an education award amount with a value exceeding the value for which the individual is eligible. The Corporation is not including a waiver requirement or option in the final rule.

L. Transfer of Education Awards (Part 2530)

The Serve America Act amended Subtitle D of title I of the NCSA to authorize individuals to transfer an education award, with limitations on who can transfer an award, and who can receive a transferred award. By statute, to transfer an award, an individual must: (1) Have successfully completed a term of service in an approved AmeriCorps State and National or Silver Scholar position; and (2) have been age 55 or older before beginning that term of service. To receive an award, an individual must: (1) Be designated by a qualifying transferring individual; (2) be the child, grandchild, or foster child of the transferring individual; and (3) be a citizen, national, or lawful permanent resident alien of the United States. The effective date of this provision was October 1, 2009; only individuals beginning service on or after that date will be eligible to transfer an education award.

Section 148(f) specifies that the “designated individual,” meaning the child, grandchild, or foster child designated by the transferring individual to receive the award, may use the award for the purposes described in paragraphs (b), (c), and (d) of that section—*i.e.*, to repay qualified student loans, to pay for current educational expenses at an institution of

higher education, or to pay expenses incurred in an approved school-to-work program. The school-to-work program, authorized under the School-to-Work Opportunities Act of 1994, sunsetted in 2001; thus, in practice, the designated individual would be able to use the award only for current educational expenses or to repay qualified student loans. The NCSA as amended does not extend the use of the transferred award to pay expenses incurred in enrolling in an institution or training establishment approved under the G.I. Bill to designated individuals, nor does it permit designated individuals to receive interest forbearance payments as described in Section 148(e).

This section of the NCSA also permits a transferring individual to, “on any date on which a portion of the education award remains unused, modify or revoke the transfer of the educational award with respect to that portion.”

This rule adds a new part 2530 on transfer, including rules reflecting statutory guidelines, and details on the processes for requesting transfers and revocations of transferred awards. The NCSA also includes a provision requiring the Corporation to “establish requirements to prevent waste, fraud, or abuse in connection with the transfer of an educational award and to protect the integrity of the educational award under this subsection.” This rule includes several measures intended to prevent waste, fraud, or abuse in connection with the transfer of an education award.

First, as part of the process for the transferring individual to request the transfer and the process for the designated individual to accept the transfer, this rule requires both the transferring individual and the designated individual to provide a certification under penalty of law that each meets the criteria to transfer, or receive, a transferred award. As with any certification, an individual may be required to produce verifying documentation.

This rule specifies in § 2530.70 that an individual is not required to accept a transferred award. We received a question regarding whether an individual may reject an award at any time, or must do so at the outset. An individual may reject an award at the outset, or at any point after acceptance. Any award amount that has been rejected will not be considered when calculating the aggregate value of education awards an individual has received. A transferring individual may re-transfer an award if the designated individual rejects the transferred award in full and the award has not yet expired.

Second, this rule limits an individual to making a single transfer of an education award that is attributable to a single term of service. An individual may transfer an award in whole or in part; thus, the transferring individual may keep a portion of an award for his or her use and transfer a portion to a designated individual. However, an individual may not transfer a single award attributable to completion of a single term of service to more than one designated individual.

The Corporation received several comments opposing this limitation, and one recommendation that the Corporation increase the limit to two designated individuals for each award. Several commenters noted that the Act does not specifically dictate this limitation; however, the Act directs the Corporation to establish rules to prevent fraud, waste, and abuse in connection with transferred awards, and this limitation is designed to mitigate such risks. Also, as stated in the proposed rule, this provision limits, but does not proscribe, an individual’s ability to transfer to multiple individuals; in order to transfer awards to more than one designated individual, the transferring individual will need to earn awards for more than one term of service.

As stated above, a transferring individual also has the authority to revoke the transfer of any unused portion of an education award. As another measure to prevent waste, fraud, or abuse, and in line with the Corporation’s intent to limit individuals to a single transfer from each award, a transferring individual would not, as a general rule, be permitted to re-transfer a revoked award to another individual.

This rule includes an exception to this general rule for those situations in which the Corporation considers the award to have been revoked for good cause, as demonstrated by the transferring individual. For example, if a transferring individual revokes the full amount transferred upon the death of a designated individual, the Corporation would permit the transferring individual to re-transfer the award in whole or in part.

The Corporation received several requests for a definition of “good cause.” Beyond the death of a transferee or a transferee’s rejection of an award in full, the Corporation cannot speculate as to the types of situations that may arise that would necessitate an individual to revoke an award, and thus is not prepared to define “good cause” at this time. The Corporation will make determinations of whether there is good cause to permit someone to re-transfer an award in a consistent manner, and

may develop a more formal policy in the future based upon the types of requests received.

This rule also includes several clarifying provisions. As discussed in the section in this rule on the limitation on the value of education awards an individual may receive, the NCSA prohibits an individual from receiving more than the aggregate value of two education awards. Under this rule, an award is considered to be "received" at the time it becomes available for an individual's use. The fact that an individual transfers an award to a designated individual will not decrease the value of awards the individual is considered to have received. Transferred awards a designated individual receives will also be considered when calculating the aggregate value of awards received.

For example, if an individual receives two full-time awards and transfers both awards to a child, both the transferring and designated individual will be considered to have received the aggregate value of two full-time awards, and neither will be eligible to receive additional AmeriCorps or Silver Scholar awards from the National Service Trust. As discussed in the section on calculating the value of an education award, a transferred award would have a value based on the amount of a full-time education award in the year the position on which the transferring individual's award was based was approved.

Under the national service laws, an individual has seven years from the date the individual completes a term of service to use an award, and a designated individual receiving a transferred award has ten years from the date the term of service is completed to use the award. For example, if an individual receives an award for a term completed in 2010, and transfers the award five years after receiving the award, the designated individual would have five years to use the award.

In accordance with these statutory time frames, this rule permits an individual to revoke the transfer of an award at any point prior to its use, but the individual may only use such an award if the award has not expired. For example, if an individual received an award for a term completed in 2010, transferred the award five years after receiving the award, and then revoked the transfer six years after receiving the award, the transferring individual would have only one year to use any unused portion of the award. If, however, the transferring individual had revoked the transfer eight years after it was originally earned, the award would

expire immediately upon revocation, because although the award had not yet expired for use by the designated individual, it would have expired for the transferring individual a year earlier.

Several commenters suggested that, in the event a person receiving a transferred award does not or cannot use it, the individual who originally transferred the award should be permitted to use the award beyond the seven-year period specified in statute. The Corporation will grant extensions to the statutory seven-year period in circumstances in which an individual was unavoidably prevented from using an education award. An individual who does not use an award during its seven year period of availability because the individual transferred the award and did not revoke the transfer prior to the award's expiration will not be considered to have been unavoidably prevented from using the award.

The Corporation received many comments opposing elements of this rulemaking that simply implement provisions of the Serve America Act, including: The provision that only an individual who serves in an AmeriCorps State and National or Silver Scholar position may transfer an education award, meaning that an individual who serves in an AmeriCorps VISTA, ServeAmerica Fellowship, or AmeriCorps NCCC position cannot transfer an award; the requirement that an individual must have served in a national service position in order to transfer an award, meaning that an individual who receives a transferred award cannot transfer that award to someone else; the provision that an eligible individual may only transfer to a child, grand-child, or foster child, meaning an individual cannot transfer an award to other family members, mentored children, or scholarship funds; the provision limiting the option to transfer to individuals age 55 and older; and the provision that education awards received by transfer must be considered when calculating the aggregate value of awards received. Expanding the types of individuals who can transfer an award, the types of individuals who may receive an award, and the impact of receiving an education award by transfer on an individual's eligibility to receive a subsequent award would require amendments to the statute, which can be done only by Congress.

Many commenters expressed concern that an individual who has received education awards by transfer will be ineligible to serve terms of service in national service positions. If an individual has received education

awards by transfer, the individual's eligibility to receive additional education awards may be limited, however, receipt of awards by transfer will not impact an individual's ability to serve in a national service position. The fact that an individual has received the maximum value of education awards does not preclude the individual's future participation in a national service position.

We received a question regarding the tax implications for the recipient of a transferred award. The Internal Revenue Service previously ruled that an education award is taxable to the person using the award in the year that it is used. The Corporation will notify national service participants and designated individuals should the Corporation receive any guidance from the Internal Revenue Service to the contrary in connection with an individual's use of a transferred award.

One commenter asked whether an individual could transfer a pro-rated award received after leaving a term for compelling personal circumstances. An eligible individual may transfer a pro-rated award received after leaving a term for compelling reasons.

Please note: an individual wishing to transfer an award will be able to do so using the Corporation's online systems beginning mid-October, 2010.

M. Periods of Availability for Silver Scholar, Summer of Service, and Transferred Education Awards (§ 2526.40)

This rule amends section § 2526.40 to include periods of availability for Silver Scholar, Summer of Service, and transferred education awards. Under section 146 of the NCSA, the period of availability for a Silver Scholar education award is seven years from the date the individual completes a term of service. The period of availability for a Summer of Service education award is ten years from the date the individual completes the term of service. Individuals who receive a transferred award may use the award within ten years of the date the transferring individual completes the term of service that is the basis for the award—not the date the designated individual receives the transferred award. For example, if an individual transfers an award five years after the date the individual completed the term of service, the designated individual would have five years to use the award—ten years from the date the transferring individual completed the term of service.

Similar to national service education awards, section 146 authorizes the Corporation to grant an extension to the

period of availability for a Silver Scholar education award, a Summer of Service education award, or a transferred award if the individual requesting the extension “was unavoidably prevented” from using the education award or if the individual “performed another term of service in an approved national service position, approved summer of service position, or approved silver scholar position during that period.”

Several commenters urged the Corporation to grant extensions to individuals who have received a transferred award but are too young to use the award by the expiration date, noting that many individuals eligible to transfer an award have very young children or grandchildren. Indeed, it is unlikely that any designated individual under the age of 8 will have had an opportunity to use an education award by the 10-year expiration date.

As stated in the proposed rule, to permit extensions for a designated individual who is too young to use an award would mean, in some cases, extensions for up to nine years beyond the original expiration date—nearly twice the statutory period of availability. The Corporation believes that the longer the period of availability, the greater the risk of fraud, waste, or abuse. Further, Congress selected ten years as a reasonable period of availability for a transferred award. Based upon these considerations, this rule maintains that an individual who is unable to use an education award as a result of being too young will *not* be considered to be unavoidably prevented from using the education award. Individuals wishing to transfer an award will be reminded at the time they request a transfer that, while there is no minimum age for a designated individual, extensions based on age will not be granted.

N. Certifications of Successful Completion of Terms of Service (§ 2526.10)

The Serve America Act amended the NCSA by adding a new section 146A, which requires that a national service program certify under penalty of law that an individual successfully completed an agreed-upon term of service to be eligible to receive an education award from the National Service Trust. Specifically, section 146A(a) provides that, in making disbursements from the National Service Trust, the Corporation is authorized to act on the basis of certifications that individuals who served in approved AmeriCorps positions, approved Summer of Service

positions, or approved Silver Scholar positions, successfully completed the term of service required to be eligible for an education award. These certifications must be made by the entity which selected the individual to serve in the position, and supervised the individual's performance of their service. This rule implements section 146A(a) by including the certification requirement in the determination of who is eligible to receive an education award under § 2526.10(a)(2)(i), (iii), and (iv).

O. Effect of Erroneous Certifications of Successful Completion of Terms of Service (§ 2526.70)

Under section 146A(b) of the NCSA, if the Corporation finds that a certification made under section 146A(a) is erroneous or incorrect, the Corporation shall assess a charge against the national service program which made the certification. The charge is to be assessed for the amount of any payment which the Corporation has or may make from the National Service Trust based on the erroneous certification. In assessing the amount of a charge, the Corporation is to consider the full facts and circumstances surrounding the erroneous or incorrect certification.

This rule implements section 146A(b) and specifies that any Corporation determination in regard to a charge under § 2526.70 will not preclude the Corporation from taking any other actions which may be warranted under other applicable authorities, such as the Program Fraud Civil Remedies Act.

One commenter noted that the proposed rule does not describe the factors which the Corporation will consider in determining the amount it will assess based on an erroneous or incorrect certification. The commenter noted that the Corporation could take a number of different approaches which could range from strict liability standards to considerations of fault (assessed against a specific evidentiary standard) to assessing charges by a formula based on the number of hours appropriately served. The commenter suggested that, if the Corporation intends to use any such standards or procedures, that they be set out by the rule.

The authority granted in section 146A(b) of the National and Community Service Act and implemented by § 2526.70 is broad. It grants to the Corporation the authority to assess and collect charges related to education awards (or portions thereof) which have not yet been disbursed from the National Service Trust. This authority

also requires the Corporation to consider “the full facts and circumstances surrounding the erroneous or incorrect certification.” Because of the breadth of this authority and the charge to consider the facts and circumstances surrounding each certification, the Corporation will make its assessments of erroneous or incorrect certifications on a case-by-case basis consistent with its overriding responsibility to treat similarly situated entities in a consistent manner. Some factors the Corporation may consider include, but are not limited to: The number of hours an individual fell short from successful completion; the number of members with hour shortfalls; and the prevalence of programmatic weaknesses.

One commenter noted that the term “national service program” is not specifically defined in § 2526.70. The commenter questioned whether the Corporation would assess charges only against “the certifying program” or may also assess charges against “upstream grantees.” The authority in section 146A(b) is to assess charges for erroneous certifications made under section 146A(a). Those certifications must be made “by the entity that selected the individual for and supervised the individual in the approved national service position.” The Corporation expects that in many cases those entities will be either subgrantees of state service commissions or AmeriCorps national grantees who receive their awards directly from the Corporation. However, the Corporation reserves the right to collect erroneous payments from the grantee or any other entity with responsibility for the program. The Corporation has not modified the proposed rule in this regard because it does not view the proposed rule as inconsistent with the authority given in section 146A(b).

One commenter asked whether the Corporation will assess charges for erroneous certifications only if an award has been disbursed from the National Service Trust. Section 146A(b) gives the Corporation the authority to assess a charge “for the amount of any associated payment or *potential* payment from the National Service Trust.” (Emphasis added). As discussed above, this authority is broad enough to encompass an assessment before an education award is disbursed. The Corporation's proposed regulation did not limit that authority.

P. Public Service Loan Forgiveness and AmeriCorps (§ 2526.20)

On September 27, 2007, President Bush signed the College Cost Reduction

and Access Act of 2007 (Pub. L. 110–84) into law. The CCRAA created the Public Service Loan Forgiveness Program. This program offers forgiveness for outstanding Federal Direct loans for those individuals who make 120 qualifying payments after October 1, 2007, while working full-time in a “public service job.” In the Department of Education’s implementing rules, “public service job” has been defined to include “serving in a full-time AmeriCorps * * * position.” (34 CFR 685.219(c); 73 FR 63527, Oct. 23, 2008). “AmeriCorps position” as defined in that section would include full-time service in AmeriCorps State and National, AmeriCorps NCCC, AmeriCorps VISTA, and ServeAmerica Fellowships.

Generally, an individual cannot receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service. For example, the law authorizing the Teacher Loan Forgiveness Program (TLFP) explicitly states that “no borrower may, for the same service, receive a benefit under this [program] and subtitle D of title I of the National and Community Service Act of 1990.” (20 U.S.C. 1078–10(g)(2)). Thus, an AmeriCorps member serving in a teacher corps program would have to choose whether to count the service year towards TLFP or AmeriCorps, but would not be able take both benefits for the same period of service.

The Public Service Loan Forgiveness Program is an exception to this general rule. Service performed by an individual serving in a full-time AmeriCorps position may be credited to both an education award and Public Service Loan Forgiveness.

This rule amends § 2526.60 to include an exception to the general prohibition on an individual’s receiving an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the Public Service Loan Forgiveness Program.

For more information on qualifying for Public Service Loan Forgiveness while serving in AmeriCorps, please visit: http://www.nationalservice.gov/for_organizations/highered/ccraa.asp.

Q. Term Limits for AmeriCorps State and National (§ 2522.235)

AmeriCorps State and National is the national service program funded under Subtitle C of Title I of the NCSA. Prior to passage of the Serve America Act, section 140(h) of the NCSA included a limitation that no program could use any Federal funds to support an

individual during a third term of service in an AmeriCorps State and National position. The Serve America Act removed section 140(h) of the NCSA, thereby eliminating the statutory limitation on the number of terms in which one could be supported with Federal funds while serving in an AmeriCorps State and National position.

The Serve America Act amended section 146(c) by changing the limitation from receiving awards for the first two terms of service to receiving up to the value of two full-time education awards. As discussed in the section on the limitation of education award receipt, these amendments now give the Corporation the flexibility to support a single individual during more than two terms of service in less-than-full-time terms. The amendments do not guarantee that an individual may serve more than two terms of service, nor do they direct the Corporation to provide an individual with the opportunity to serve more than two terms of service. Rather, the amended provision establishes a new limitation that the Corporation must enforce.

By statute, one of the Corporation’s guiding purposes is to “encourage citizens of the United States * * * to engage in full-time or part-time national service.” In furtherance of this, the Corporation’s longstanding policy is to limit the number of terms an individual may serve in an approved national service position to ensure that there are opportunities for all interested Americans to serve. Increasingly, applications for AmeriCorps far exceed available positions. The Corporation’s longstanding limitation of two terms of service in AmeriCorps State and National meant that, after a maximum of two terms, a position was available for a new individual to have an opportunity to serve.

However, the Corporation appreciates that the law as amended affords more opportunities to serve for those individuals who serve in less-than-full-time positions. To balance the increased flexibility afforded by the amended statute with the Corporation’s interest in providing more Americans an opportunity to serve, this rule doubles the number from two to four terms an individual may serve in AmeriCorps State and National and be supported with federal funds. This will provide twice as many opportunities as were previously available, but will place a reasonable limit in order to ensure service opportunities are available for other interested participants. This does not mean that an individual is guaranteed four terms of service in AmeriCorps State and National.

A term of service includes full-time, part-time, reduced part-time, quarter-time, and minimum-time terms, as well as any term from which one exits after serving 15 percent of the agreed term of service, and any term from which one is exited for misconduct. If a person leaves for reasons other than misconduct prior to serving 15 percent, the term is not considered a term of service for the purposes of this limitation.

Exhaustion of the number of terms one may serve in AmeriCorps State and National would not necessarily prevent an individual from enrolling in a position in another national service program, such as AmeriCorps NCCC, AmeriCorps VISTA, or Silver Scholars.

The Corporation received many comments expressing concern about the proposed limit of four terms. These comments generally fell into one of three categories: (1) Those who opposed any term limit for AmeriCorps; (2) those who believe the limitation on education award value received is a sufficient limitation on the number of terms an individual may serve; and (3) those who agree that there should be a limit on the number of terms an individual may serve, but recommend expanding the limit to 5 or more.

The Corporation does not agree that an individual should be permitted to serve in AmeriCorps indefinitely. As discussed above, a limitation on terms ensures that national service positions will be available for more individuals to serve.

Most commenters supported a limitation to the number of terms, but recommended an increase over the proposed rule. Many encouraged the Corporation to adopt a different mechanism for limiting terms, or to rely on the limitation of education award receipt as a sufficient limitation. Based upon the Corporation’s statement in the proposed rule that a limitation of the value of two full-time education awards should be understood as “a limitation of two full-time service opportunities,” one commenter recommended that the term limit approximate a limit of two full-time service opportunities. One commenter suggested using MSY’s (member service years) served as a possible mechanism for measuring the value of service opportunities one has had in AmeriCorps. Another commenter recommended setting a limitation of 3,400 hours served, the equivalent of two full-time terms of service.

The Corporation considered various methodologies in implementing the Serve America Act amendments, but concluded that the number of possible service opportunities afforded by such

methodologies would be counter to ensuring that opportunities to serve are appropriately distributed among those interested. A limit of up to two MSYs would permit someone to serve up to 9 minimum time terms, and a limit of 3,400 hours would permit an individual to serve up to 10 minimum time terms. Further, developing separate value systems for AmeriCorps terms of service and education awards received presents an additional challenge by making AmeriCorps service overly complicated.

The Corporation did not consider using the limitation on education awards alone as a sufficient limit to the number of terms an individual may serve, as using such a limitation would prevent an individual who received education awards through transfer from later serving in an approved AmeriCorps position. To enable these individuals to serve, the Corporation is permitting individuals to enroll in AmeriCorps without receiving an education award. In short, the Corporation believes it necessary to have separate limitations on the number of terms an individual may serve in AmeriCorps State and National and on the value of education awards an individual may receive.

Many commenters offered arguments in support of expanding the term limit, including that participants want to continue service beyond four terms, that increasing the number of terms permits the organization to benefit from a participant's cumulative experience, or similarly that the organization could benefit from the community relationships the participant may have developed over time.

The Corporation does not believe that placing a limit on the number of terms one may serve in AmeriCorps State and National will prevent those individuals interested in continued service from serving, whether it be through their careers, as volunteers, or as participants in other programs such as AmeriCorps NCCC, AmeriCorps VISTA, or a Senior Corps program. Additionally, unlike employment, AmeriCorps is not intended to be a long-term arrangement. If a program wishes to retain a particular individual, the sponsoring organization should consider developing a staff position. In any event, a reasonable limit on the terms of service advances the overriding goal of having meaningful opportunities to serve for all those interested.

The Corporation also received comments in opposition to the Corporation's justification for limiting the number of terms. One commenter noted that the appropriate remedy for ensuring that there are sufficient

AmeriCorps members is to increase funding for AmeriCorps, not limit the number of terms an individual may serve. However, recent funding increases have not kept up with the increase in the number of Americans applying to become AmeriCorps members.

One commenter noted that while applications for AmeriCorps service may outnumber available positions overall, this may not be true for individual programs, and that the total number of applicants is not representative of the total number of qualified applicants. This commenter encouraged the Corporation to permit organizations that are able to demonstrate an inability to secure qualified AmeriCorps members a waiver to permit individuals to serve more than four terms. In such cases, the Corporation encourages programs to strengthen their local recruitment methods as well as use the Corporation's online recruitment system.

R. Selection Criteria Sub-Categories for AmeriCorps State and National (Part 2522)

The Serve America Act amended Subtitle C of Title I of the NCSA by placing greater emphasis on a grantee's impact. Programs are now described not only in terms of their programmatic activities and the unmet community needs the programs are addressing, but also in terms of "performance indicators" that demonstrate the program's impact. Additionally, the NCSA now requires the Corporation to fund each year at least two of five statutorily-described programs, including programs that address unmet education, health, economic opportunity, veteran, and clean energy needs. While the Corporation can accommodate these changes in future grant competitions without changing our current published selection criteria, the current "sub-categories" of the basic selection criteria and the published weights for the sub-categories are an imperfect fit for the increased emphasis on performance and funding of programs addressing particular community needs.

This rule removes §§ 2522.425–2522.435, the sections that describe the sub-categories of the three basic selection criteria, as well as §§ 2522.445–2522.448, the sections that set out the weights given to the sub-categories.

The Corporation may, in the future, publish specific sub-categories for the basic selection criteria in the Notice of Funding Opportunity or Availability.

This will enable the Corporation to adjust application components and the weights given to sub-components. The Corporation expects that future grant applications will focus less on the process through which grantees achieve their outcomes and more on the outcomes they produce. Additionally, this will further the Corporation's continued efforts to simplify the application process, as supported by the Serve America Act.

The Corporation will continue to use a multi-stage process, including review by a panel of experts, and will continue to make funding decisions based on the same basic selection criteria of program design, organizational capability, and cost-effectiveness and budget adequacy. The weights given to the basic selection criteria—50% for program design, 25% for organizational capability, and 25% for cost-effectiveness and budget adequacy—will not change. The change in location of published sub-categories and their respective weights does not signify a change in the Corporation's standards for transparency, clarity, and consistency in considering applications. All applicants will be made aware of any sub-categories of selection criteria in advance of the application and review process.

The Corporation received several comments expressing concern that the Corporation's timeline for releasing application instructions will arrive too late for State Commissions to be able to help sub-grantees prepare their applications, for State Commissions to operate their own grant competition, and for programs to conduct the type of community assessment and planning necessary to formulate a potentially successful program model. The Corporation intends to release the Notice of Funds Availability and application instructions by late summer each year. This will allow Commissions and multi-state applicants the opportunity to run their RFP processes in the Fall in preparation for submitting applications to the Corporation by its due date the following winter.

S. Applications for the Same Project (§ 2522.320)

The Serve America Act amended section 130(g) of the NCSA, which previously required the Corporation to "reject an application * * * if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation." As amended, this section now prohibits the Corporation from providing "more than [one] grant under the national service laws for a fiscal year to support the

same project under the national service laws.” This provision supports the Corporation’s longstanding practice not to provide more than one grant to the same project. In addition, the revised language increases the Corporation’s flexibility in structuring its grant application review process.

This rule aligns the regulations with the amended statute by removing the regulatory conditions under which an applicant may submit multiple applications for the same project. In the future, the Corporation will include guidance on applying for different funds for the same project in the grant application instructions. For the purposes of preventing the same project from receiving more than one grant under the national service laws, the Corporation will continue to use the characteristics currently listed in § 2522.340 when determining whether two projects are the same.

T. Pre-Approval of Formula Programs (§ 2550.80)

Section 130(f) of the NCSA was amended by the Serve America Act by removing the requirement that a State’s application for Subtitle C (of title I of the NCSA) formula funds include an assurance that formula programs be selected on a competitive basis *prior* to submission of the application. This amendment aligns with language from the Corporation’s annual appropriations and conforms to current practice. States continue to be required to provide an assurance that formula programs will be selected on a competitive basis, however, States may select these programs after submitting the application for Subtitle C formula funds. This rule amends § 2550.80 to reflect this change.

U. Hardship Waiver Permitted for Cost Reimbursement Requirement for Senior Companion and Foster Grandparent Programs (§§ 2551.92, 2552.92)

Under past regulations, the total of cost reimbursements attributable to Senior Companions or Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, may not exceed 80 percent of the Federal share of the grant award. Because of the financial challenges faced by some organizations as a result of the recent economic downturn and the real potential for a decrease in non-Federal support, this rule permits the Corporation to allow an exception to the 80 percent limit in cases of demonstrated need. Demonstrated need would include initial difficulties in developing local funding sources in the

first three years of operation; an economic downturn, natural disaster, or other similar event that severely reduces sources of local funding support; or the unexpected discontinuation of a long-term local funding source.

The Corporation received a total of 65 comments related to the proposed rule change. One comment supported the proposal as stated in the Proposed Rule; one comment suggested the Corporation eliminate the “may not exceed 80 percent of the Federal share” entirely; 3 comments suggested that the Corporation change the ratio to “may not exceed 60 percent”; and 60 comments suggested that the Corporation change the ratio to “may not exceed 70 percent.” Implicit in these comments was the concern that non-Federal sources of funds are increasingly difficult to secure, and that a proposal to waive the requirement on a case-by-case basis may not be applied consistently across all grantees.

While the Corporation understands the concerns expressed and is sensitive to resource acquisition issues at the grantee level, it believes that the proposal put forth in the Proposed Rule best serves the statutory intent related to the programs. By allowing case-by-case waivers, based on specific conditions identified by grantees, the Corporation can provide administrative relief when warranted. The Corporation will develop standard criteria for waivers that will include economic downturn at the local level.

IV. Summary of Redesignations

Previous location	New location
§ 2522.220(c)	§ 2522.220(b)
§ 2522.220(d)	§ 2522.220(c)
§ 2522.220(e)	§ 2522.220(d)
§ 2522.220(f)	§ 2522.220(e)
§ 2522.220(g)	§ 2522.220(f)
Part 2530	Part 2531
Part 2531	Part 2532
Part 2532	Part 2533

V. Effective Dates

Except for the amendments to §§ 2522.220, 2522.230, 2522.235, and 2522.240, which are effective August 20, 2010, this rule is effective September 20, 2010.

VI. Non-Regulatory Issues

Executive Order 12866

Under Executive Order 12866, the Chief Executive Officer must determine whether this regulatory action is “significant” and therefore subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866 defines a

“significant regulatory action” as an action likely to result in a rule that may (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an “economically significant” rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) create novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. The Chief Executive Officer has determined that this regulatory action is not significant under the Executive Order.

Regulatory Flexibility Act

The Corporation has determined that the 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, the Corporation 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.

Paperwork Reduction Act of 1995

Sections 2526.10, 2528.10, 2528.30, 2528.40, 2528.60, 2528.70, 2529.10, 2530.30, and 2530.85 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Corporation has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 2526.10 identifies two new categories of individuals eligible to receive education awards: Individuals who have successfully completed terms of service in Silver Scholar positions and those who have successfully completed terms of service in Summer of Service positions. These additions require the development of new enrollment and exit forms for the

National Service Trust for individuals enrolling in and exiting from Silver Scholar or Summer of Service positions. The Corporation estimates the burden associated with filling out a Silver Scholar or Summer of Service enrollment form to be 3 minutes and a Silver Scholar or Summer of Service exit form to be 3 minutes. Additionally, § 2526.10 requires the program supervising the participant to certify that the participant met eligibility criteria and successfully completed the required term of service. The proposed change affects those programs that supervise participants. The burden hour estimate associated with the current exit form reported under OMB Control Number 3045–0015 is 3 minutes. The Corporation does not expect the proposed changes to increase the burden for this collection.

Section 2528.10 expands the available uses of an education award to include use for current educational expenses incurred in enrolling in an educational institution or training establishment approved for educational benefits under the G.I. Bill for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary of Veterans Affairs. Sections 2528.60–70 lay out the processes for requesting to use an award for this purpose. These provisions affect individuals who choose to use education awards for this purpose, and the educational institutions or training establishments at which such individuals elect to use their awards. The burden hour estimate associated with the current voucher and payment request form reported under OMB Control Number 3045–0014 is 5 minutes. The Corporation does not expect these additions to increase the burden for this collection.

Section 2529.10 expands the availability of payments on accrued interest to individuals who successfully complete terms of service in Silver Scholar positions. This affects those individuals who serve in Silver Scholar programs and elect to place qualified student loans in forbearance, and request accrued interest payments from the National Service Trust. The burden hour estimate associated with the current forbearance request form and interest accrual form, reported under OMB Control Numbers 3045–0030 and 3045–0053 are 1 minute and 10 minutes, respectively. The Corporation does not expect the changes to increase the burdens for these collections.

Sections 2530.30 and 2530.85 set forth the processes for requesting to transfer an award, accepting a

transferred award, and revoking a transferred award. This affects those individuals who choose to transfer their education awards and those individuals receiving awards via transfer. The Corporation estimates the burden associated with requesting to transfer an award and accepting a transferred award to be 5 minutes, and the burden associated with revoking a transferred award to be 5 minutes.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2518

Grants administration, Grant programs—social programs.

45 CFR Part 2522

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2527

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2529

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2530

Education, Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2531

Grant programs—social programs.

45 CFR Part 2532

Grant programs—social programs, Volunteers.

45 CFR Part 2533

Grants administration, Grant programs—social programs.

45 CFR Part 2550

Grants administration, Grant programs—social programs.

45 CFR Part 2551

Grants administration, Grant programs—social programs, Volunteers.

45 CFR Part 2552

Grants administration, Grant programs—social programs, Volunteers.

■ For the reasons stated in the preamble, under the authority 42 U.S.C. 12651d, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

■ 2. Amend § 2510.20 by adding definitions for “Approved Silver Scholar position” and “Approved Summer of Service position” in alphabetical order, to read as follows:

§ 2510.20 Definitions

* * * * *

Approved Silver Scholar Position. The term *approved Silver Scholar position* means a Silver Scholar position for which the Corporation has approved a Silver Scholar education award.

Approved Summer of Service Position. The term *approved Summer of Service position* means a Summer of Service position for which the Corporation has approved a Summer of Service education award.

* * * * *

PART 2518—SERVICE-LEARNING CLEARINGHOUSE

■ 3. The authority citation for part 2518 is amended to read as follows:

Authority: 42 U.S.C. 12653o.

§ 2518.100 [Amended]

■ 4. Amend § 2528.100 by removing the reference “parts 2530 through 2533” and adding “parts 2531 through 2534” in its place.

§ 2518.110 [Amended]

■ 5. Amend § 2528.110 by removing the reference “parts 2530 through 2533” in the introductory text and adding “parts 2531 through 2534” in its place.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 6. The authority citation for part 2522 continues to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911.

§ 2522.100 [Amended]

- 7. Amend § 2522.100 by removing the reference “part 2532” in paragraph (g)(2) and adding “part 2533” in its place.
- 8. Amend § 2522.220 by:
 - a. Revising the heading;
 - b. Removing paragraph (b);
 - c. Redesignating paragraphs (c) through (g) as (b) through (f), respectively; and
 - d. Revising newly designated paragraph (b).

The revisions read as follows:

§ 2522.220 What are the required terms of service for AmeriCorps participants?

(b) *Eligibility for subsequent term.* A participant will only be eligible to serve a subsequent term of service if that individual has received a satisfactory performance review for any previous term of service in an approved AmeriCorps position, in accordance with the requirements of paragraph (d) of this section and § 2526.15. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

- 9. Amend § 2522.230 by:
 - a. Revising the heading;
 - b. Revising paragraphs (b)(6) and (b)(7); and
 - c. Amending paragraph (e) by removing the word “two”.

The revisions will read as follows:

§ 2522.230 Under what circumstances may an AmeriCorps participant be released from completing a term of service, and what are the consequences?

(b) * * *

(6) An individual's eligibility for a subsequent term of service in AmeriCorps will not be affected by release for cause from a prior term of service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.220(c)(2) for the period served in the prior term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the terms of service described in § 2522.235 for which an individual may receive the benefits described in § 2522.240 through 2522.250.

- 10. Add § 2522.235 to read as follows:

§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?

(a) *General limitation.* An individual may receive the benefits described in

§ 2522.240 through § 2522.250 for no more than four terms of service in an AmeriCorps State and National program, regardless of whether those terms were served on a full-, part-, or reduced part-time basis, consistent with the limitations in § 2526.50.

(b) *Early release.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for compelling personal circumstances or for cause counts as one of the terms of service for which an individual may receive the benefits described in § 2522.240 through § 2522.250.

(c) *Release prior to serving fifteen percent of a term.* If a person is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the terms of service for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

- 11. Amend § 2522.240 by:
 - a. Revising paragraph (a); and
 - b. Removing “§ 2522.220(g)” in paragraph (c) and adding “§ 2522.220(f)” in its place.

The revision reads as follows:

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps education awards.* An individual serving in an approved AmeriCorps State and National position may receive an education award from the National Service Trust upon successful completion of each of no more than four terms of service as defined in § 2522.220, consistent with the limitations in § 2526.50.

§§ 2522.320, 2522.330, 2522.425, 2522.430, 2522.435, 2522.445, and 2522.448 [Removed and Reserved]

- 12. Remove and reserve §§ 2522.320, 2522.330, 2522.425, 2522.430, 2522.435, 2522.445, and 2522.448.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

- 13. The authority citation for part 2525 is amended to read as follows:

Authority: 42 U.S.C. 12601–12606.

- 14. Amend § 2525.20 by:
 - a. Removing the definition for “Approved school-to-work program”;
 - b. Revising the definitions for “education award” and “term of service”; and
 - c. Adding definitions for “AmeriCorps education award,” “economically disadvantaged youth,” “G.I. Bill

approved program,” “Silver Scholar education award,” and “Summer of Service education award” in alphabetical order, to read as follows:

§ 2525.20 Definitions.

* * * * *

AmeriCorps education award. For the purposes of this section, the term *AmeriCorps education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved AmeriCorps position may be eligible.

* * * * *

Economically disadvantaged youth. For the purposes of this section, the phrase *economically disadvantaged youth* means a child who is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

Education award. For the purposes of this section, the term *education award* refers to the financial assistance available under parts 2526 through 2528 of this chapter, including AmeriCorps education awards, Silver Scholar education awards, and Summer of Service education awards.

* * * * *

G.I. Bill approved program. For the purposes of this section, a *G.I. Bill Approved Program* is an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill (38 U.S.C. 3670 *et seq.*) for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs.

* * * * *

Silver Scholar education award. For the purposes of this section, the term *Silver Scholar education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Silver Scholar position may be eligible.

Summer of Service education award. For the purposes this section, the term *Summer of Service education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Summer of Service position may be eligible.

Term of service. The term *term of service* means—

- (1) For an individual serving in an approved AmeriCorps position, one of the terms of service specified in § 2522.220 of this chapter;
- (2) For an individual serving in an approved Silver Scholar position, not less than 350 hours during a one-year period; and

(3) For an individual serving in an approved Summer of Service position, not less than 100 hours during the summer months of a single year.

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

■ 15. The authority citation for part 2526 is revised to read as follows:

Authority: 42 U.S.C. 12601–12604, 12606.

■ 16. Amend § 2526.10 by revising paragraph (a) to read as follows:

§ 2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the organization responsible for the individual's supervision in a national service program certifies that the individual—

(1) Met the applicable eligibility requirements for the approved AmeriCorps position, approved Silver Scholar position, or approved Summer of Service position, as appropriate, in which the individual served;

(2) (i) For an AmeriCorps education award, successfully completed the required term of service in the approved national service position;

(ii) For a partial AmeriCorps education award, completed at least 15 percent of the originally-approved term of service, and performed satisfactorily prior to being granted a release for compelling personal circumstances consistent with § 2522.230(a);

(iii) For a Summer of Service education award, successfully completed the required term of service in a Summer of Service position; or

(iv) For a Silver Scholar education award, successfully completed the required term of service in a Silver Scholar position; and

(3) Is a citizen, national, or lawful permanent resident alien of the United States.

* * * * *

■ 17. Add § 2526.15 to read as follows:

§ 2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?

(a) An organization responsible for the supervision of an individual serving in an AmeriCorps State and National position must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation conducted pursuant to § 2522.220(d).

(b) An organization responsible for the supervision of an individual serving in a program other than AmeriCorps State and National must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation that examines whether the individual satisfies all of the following conditions:

(1) Completed the required number of service hours for the term of service;

(2) Satisfactorily performed on assignments, tasks, or projects; and

(3) Met any performance criteria as determined by the program and communicated to the member.

(c) A certification by the organization responsible for the supervision of an individual that the individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

■ 18. Amend § 2526.20 by revising paragraph (a) to read as follows:

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant in an approved AmeriCorps position who is released prior to completing an approved term of service for compelling personal circumstances in accordance with § 2522.230(a) is eligible for a pro-rated education award if the participant—

(1) Performed satisfactorily prior to being granted a release for compelling personal circumstances; and

(2) Completed at least 15 percent of the originally-approved term of service.

* * * * *

■ 19. Add § 2526.25 to read as follows:

§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?

No. An individual released for any reason prior to completing an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

■ 20. Revise § 2526.40 to read as follows:

§ 2526.40 What is the time period during which an individual may use an education award?

(a) *General requirement.* Unless the Corporation approves an extension in accordance with the requirements of paragraph (b) of this section—

(1) An individual may use an AmeriCorps education award or a Silver Scholar education award within seven

years of the date on which the individual successfully completed a term of service in an approved AmeriCorps or Silver Scholar position;

(2) An individual may use a Summer of Service education award within ten years of the date on which the individual successfully completed a term of service in an approved Summer of Service position;

(3) A designated individual who receives a transferred education award in accordance with § 2530.10 may use the transferred education award within ten years of the date on which the individual who transferred the award successfully completed the term of service in an approved AmeriCorps or Silver Scholar position that is the basis of the award.

(b) *Extensions.* In order to receive an extension of the period of availability specified in paragraph (a) of this section for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation may grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps, Summer of Service, or Silver Scholar position during the original period of availability, the Corporation may grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the original period of availability, the Corporation may grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph. In the case of a transferred award, an individual who is unable to use an education award as a result of being too young to enroll in an institution of higher education or other training establishment is not considered to be unavoidably prevented from using the education award.

■ 21. Revise § 2526.50 to read as follows:

§ 2526.50 Is there a limit on the total amount of education awards an individual may receive?

(a) *General Limitation.* No individual may receive more than an amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of the value of an education award.* For the purposes of this section, the *value* of an education award is equal to the actual amount of the education award received divided by the amount of a full-time education award in the year the AmeriCorps or Silver Scholar position to which the award is attributed was approved. Each award received will be considered to have a value between 0 and 1. Although the *amount* of a full-time award as defined in § 2527.10(a) may change, the *value* of a full-time award will always be equal to 1.

(c) *Calculation of aggregate value of awards received.* The aggregate value of awards received is equal to the sum of:

(1) The value of each education award received as a result of successful completion of an approved AmeriCorps position;

(2) The value of each partial education award received as a result of release from an approved AmeriCorps position for compelling personal circumstances;

(3) The value of each education award received as a result of successful completion of a term of service in an approved Silver Scholar position; and

(4) The value of any amount received as a transferred education award, except as provided in § 2530.60(c).

(d) *Determination of Receipt of Award.* For purposes of determining the aggregate value of education awards, an award is considered to be received at the time it becomes available for an individual's use.

■ 22. Add § 2526.55 to read as follows:

§ 2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?

The aggregate value of education awards an individual has received will not impact an individual's ability to serve in a subsequent term of service, but will impact the amount of the education award the individual may receive upon successful completion of that term of service. If the award amount offered for the term of service has a value that, when added to the aggregate value of awards previously received, would exceed 2, upon successful completion of the term of service, the individual will only receive that portion of the award having a value for which the individual is eligible pursuant to § 2527.10(g).

■ 23. Revise § 2526.60 to read as follows:

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans, except an individual may credit the service toward the Public Service Loan Forgiveness Program, as provided under 34 CFR § 685.219.

■ 24. Add § 2526.70 to read as follows:

§ 2526.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If the Corporation determines that the certification made by a national service program under § 2526.10(a)(2)(i), (2)(iii), or (2)(iv) is erroneous, the Corporation shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances surrounding the erroneous or incorrect certification.

(b) Nothing in this section shall prohibit the Corporation from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

■ 25. The authority citation for part 2527 is amended to read as follows:

Authority: 42 U.S.C. 12601–12606.

■ 26. Amend § 2527.10 by:

■ a. Revising the heading;

■ b. Revising paragraphs (a), (b), and (c); and

■ c. Adding new paragraphs (e), (f), and (g).

The revisions and additions read as follows:

§ 2527.10 What is the amount of an education award?

(a) *Full-time term of service.* Except as provided in paragraph (g) of this section, the education award for a full-time term of service in an approved AmeriCorps position of at least 1,700 hours will be 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 award year in

which the term of service is approved by the Corporation.

(b) *Part-time term of service.* Except as provided in paragraph (g), the education award for a part-time term of service in an approved AmeriCorps position of at least 900 hours is equal to one half of the amount of an education award amount for a full-time term of service described in paragraph (a) of this section.

(c) *Reduced part-time term of service.* Except as provided in paragraph (g), the education award for a reduced part-time term of service in an approved AmeriCorps position of fewer than 900 hours is:

(1) An amount equal to the product of:

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) The amount of the education award for a part-time term of service described in paragraph (b) of this section; or

(2) An amount as determined otherwise by the Corporation.

* * * * *

(e) *Summer of Service Education Award.* (1) *In general.* The education award for a term of service in an approved Summer of Service position for at least 100 hours is \$500.

(2) *Exception.* The Corporation may authorize a Summer of Service education award of \$750 if the participant is economically disadvantaged, as verified by the organization or school operating the Summer of Service program.

(f) *Silver Scholar Education Award.* Except as provided in paragraph (g) of this section, the education award for a term of service in an approved Silver Scholar position for at least 350 hours is \$1,000.

(g) *Calculating discounted education award amount.* To ensure that an individual receives no more than the aggregate value of two awards, as determined pursuant to § 2526.50, the discounted amount an individual is eligible to receive is determined by the following formula:

$$(2 - \text{aggregate value of awards the individual has received}) \times (\text{amount of a full-time education award in the year the position is approved})$$

PART 2528—USING AN EDUCATION AWARD

■ 27. The authority citation for part 2528 is revised to read as follows:

Authority: 42 U.S.C. 12601–12606.

■ 28. Revise § 2528.10(a)(3) to read as follows:

§ 2528.10 For what purposes may an education award be used?

(a) * * *

(3) To pay expenses incurred in enrolling in a G.I. Bill approved program, in accordance with §§ 2528.60–80.

* * * * *

■ 29. Revise § 2528.30 (a)(2)(vi)(A) and (B) to read as follows:

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) * * *

(2) * * *

(vi) * * *

(A) The individual's cost of attendance and other educational expenses; and

(B) The individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act (20 U.S.C. 1070 *et seq.*).

* * * * *

■ 30. Revise § 2528.40(a) and (b) to read as follows:

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

* * * * *

(a) The individual's cost of attendance and other educational expenses, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The individual's estimated financial assistance for that period under part A of title IV of the Higher Education Act.

■ 31. Revise § 2528.60 to read as follows:

§ 2528.60 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill approved program?

To use the education award to pay expenses for this purpose, you must have received an education award for successfully completing a term in an approved AmeriCorps position, approved Summer of Service position, or approved Silver Scholar position, in which you enrolled on or after October 1, 2009.

■ 32. Revise § 2528.70 to read as follows:

§ 2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill approved program?

(a) *Required Information.* Before disbursing an amount from an education

award for this purpose, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that the individual meets the criteria in § 2528.60; and

(3) Information from the educational institution or training establishment as requested by the Corporation, including verification that—

(i) The amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training offered by the institution or establishment;

(ii) The course(s) or program(s) for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs; and

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution or establishment will ensure a pro-rata refund to the Corporation of the unused portion of the education award.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution or establishment and notify the individual of the payment.

■ 33. Add § 2528.80 to read as follows:

§ 2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?

(a) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, the approved educational institution or training establishment that receives a disbursement of education award funds from the Corporation must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

PART 2529—PAYMENT OF ACCRUED INTEREST

■ 34. The authority citation of part 2529 is amended to read as follows:

Authority: 42 U.S.C. 12601–12606.

■ 35. Amend § 2529.10 by revising the heading and paragraph (a)(1) to read as follows:

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?

(a) * * *

(1) The individual successfully completes a term of service in an approved AmeriCorps position or approved Silver Scholar position; and

* * * * *

PARTS 2530, 2531, 2532, and 2533 [REDESIGNATED AS PARTS 2531, 2532, 2533, and 2534]

■ 36. Under the authority of 42 U.S.C. 12651d, redesignate parts 2530, 2531, and 2532 as parts 2531, 2532, and 2533, respectively.

■ 37. Add a new part 2530 to read as follows:

PART 2530—TRANSFER OF EDUCATION AWARDS

Sec.

2530.10 Under what circumstances may an individual transfer an education award?

2530.20 For what purposes may a transferred award be used?

2530.30 What steps are necessary to transfer an education award?

2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

2530.70 Is a designated individual required to accept a transferred education award?

2530.80 Under what circumstances is a transfer revocable?

2530.85 What steps are necessary to revoke a transfer?

2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

Authority: 42 U.S.C. 12601–12606.

§ 2530.10 Under what circumstances may an individual transfer an education award?

An individual may transfer an education award if—

(a) The individual enrolled in an approved AmeriCorps State and National position or approved Silver Scholar position on or after October 1, 2009;

(b) The individual was age 55 or older on the day the individual commenced the term of service in an approved AmeriCorps State and National position or in approved Silver Scholar position;

(c) The individual successfully completed a term of service in an approved AmeriCorps State and National position or an approved Silver Scholar position;

(d) The award the individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2526.40(a);

(e) The individual designated to receive the transferred award is the transferring individual's child, grandchild, or foster child; and

(f) The individual designated to receive the transferred award is a citizen, national, or lawful permanent resident alien of the United States.

§ 2530.20 For what purposes may a transferred award be used?

A transferred award may be used by a designated individual to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2528.10.

§ 2530.30 What steps are necessary to transfer an education award?

(a) *Request for Transfer.* Before transferring an award to a designated individual, the Corporation must receive a request from the transferring individual, including—

(1) The individual's written authorization to transfer the award, the year in which the award was earned, and the specific amount of the award to be transferred;

(2) Identifying information for the individual designated to receive the transferred award;

(3) A certification that the transferring individual meets the requirements of paragraphs (a) through (c) of § 2530.10; and

(4) A certification that the designated individual is the child, grandchild, or foster child of the transferring individual.

(b) *Notification to Designated Individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will contact the designated individual to notify the individual of the proposed transfer, confirm the individual's identity, and give the individual the opportunity to accept or reject the transferred award.

(c) *Acceptance by Designated Individual.* To accept an award, a designated individual must certify that the designated individual is the child, grandchild, or foster child of the transferring individual and that the designated individual is a citizen, national, or lawful permanent resident alien of the United States. Upon receipt

of the designated individual's acceptance, the Corporation will create or permit the creation of an account in the National Service Trust for the designated individual, if an account does not already exist, and the accepted amount will be deducted from the transferring individual's account and credited to the designated individual's account.

(d) *Timing of transfer.* The Corporation must receive the request from the transferring individual prior to the date the award expires.

§ 2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

(a) *General Limitation.* For each award an individual earns as a result of successfully completing a single term of service, an individual may transfer all or part of the award to a single designated individual. An individual may not transfer a single award attributable to successful completion of a single term of service to more than one designated individual.

(b) *Re-transfer.* If a designated individual rejects a transferred award in full, or the Corporation otherwise determines that a transfer was revoked for good cause in accordance with § 2530.80(c), the transferring individual may designate another individual to receive the transferred award.

§ 2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

Consistent with § 2526.50, no individual may receive more than an amount equal to the value of two full-time education awards. If the sum of the value of the requested transfer plus the aggregate value of education awards a designated individual has previously received would exceed the aggregate value of two full-time education awards, as determined pursuant to § 2526.50(b), the designated individual will be deemed to have rejected that portion of the award that would result in the excess. If a designated individual has already received the aggregate value of two full-time education awards, the individual may not receive a transferred education award, and the designated individual will be deemed to have rejected the award in full.

§ 2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

(a) *Impact on Transferring Individual.* Pursuant to § 2526.50, an award is considered to be received at the time it becomes available for an individual's

use. Transferring all or part of an award does not reduce the aggregate value of education awards the transferring individual is considered to have received.

(b) *Impact on Designated Individual.* For the purposes of determining the value of the transferred education award under § 2526.50, a designated individual will be considered to have received a value equal to the amount accepted divided by the amount of a full-time award in the year the transferring individual's position was approved.

(c) *Result of revocation on award value.* If the transferring individual revokes, in whole or in part, a transfer, the value of the education award considered to have been received by the designated individual for purposes of § 2526.50 will be reduced accordingly.

§ 2530.70 Is a designated individual required to accept a transferred education award?

(a) *General Rule.* A designated individual is not required to accept a transferred education award, and may reject an award in whole or in part.

(b) *Result of rejection in full.* If the designated individual rejects a transferred award in whole, the amount is credited to the transferring individual's account in the National Service Trust, and may be transferred to another individual, or may be used by the transferring individual for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Result of rejection in part.* If the designated individual rejects a transferred award in part, the rejected portion is credited to the transferring individual's account in the National Service Trust, and may be used by the transferring individual's for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a). An individual may not re-transfer the rejected portion of the award to another individual.

§ 2530.80 Under what circumstances is a transfer revocable?

(a) *Revocation.* An individual may revoke a transfer at any time and for any reason prior to the award's use by the designated individual.

(b) *Use of Award.* Upon revocation, the amount revoked will be deducted from the designated individual's account and credited to the transferring individual's account. The transferring individual may use the revoked transferred education award for any of the purposes described in § 2528.10,

consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Re-transfer.* Generally, an individual may not re-transfer an award to another individual after revoking the same award from the original designated individual. The Corporation may approve re-transfer of an award for good cause, including cases in which the original designated individual was unavoidably prevented from using the award, as demonstrated by the individual transferring the award.

§ 2530.85 What steps are necessary to revoke a transfer?

(a) *Request for revocation.* Before revoking a transfer, the transferring individual must submit a request to the Corporation that includes —

- (1) The individual's written authorization to revoke the award;
- (2) The year in which the award was earned;
- (3) The specific amount to be revoked; and
- (4) The identity of the designated individual.

(b) *Credit to transferring individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will deduct the amount specified in the transferring individual's request from the designated individual's account and credit the amount to the account of the transferring individual, except as provided in paragraph (c) of this section. The Corporation will notify the transferring individual of the amount revoked.

(c) *Used awards.* A revocation may only apply to that portion of the transferred award that has not been used by the designated individual. If the designated individual has used the entire transferred amount prior to the date the Corporation receives the revocation request, no amount will be returned to the transferring individual. An amount is considered to be used when it is disbursed from the National Service Trust, not when a request is received to use an award.

(d) *Notification to designated individual.* The Corporation will notify the designated individual of the amount being revoked as of the date of the Corporation's receipt of the revocation request.

(e) *Timing of revocation.* The Corporation must receive the request to revoke the transfer from the transferring individual prior to the award's expiration ten years from the date the award was originally earned.

§ 2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

No, an individual must have successfully completed a term of service in an approved AmeriCorps position or Silver Scholar position to be eligible for the payment of accrued interest under Part 2529.

PART 2533—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

- 38. The authority for part 2533 is revised to read as follows:

Authority: 42 U.S.C. 12657.

§ 2533.10 [Amended]

- 39. Amend newly redesignated § 2533.10 by removing the reference "part 2530" and adding "part 2531" in its place in the following locations:
- a. In the introductory text; and
 - b. In paragraph (p).

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

- 40. The authority citation for part 2550 continues to read as follows:

Authority: 42 U.S.C. 12638.

- 41. Amend § 2550.80 by revising paragraph (b) to read as follows:

§ 2550.80 What are the duties of the State entities?

* * * * *

(b) *Selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

- (1) Prepare an application to the Corporation to receive funding or education awards for national service programs operating in and selected by the State.
- (2) Administer a competitive process to select national service programs for funding. The State is not required to select programs for funding prior to submission of the application described in paragraph (b)(1) of this section.

* * * * *

PART 2551—SENIOR COMPANION PROGRAM

- 42. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

- 43. Amend § 2551.92 by revising paragraph (e) to read as follows:

§ 2551.92 What are project funding requirements?

* * * * *

(e) *How are Senior Companion cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

- (i) Initial difficulties in the development of local funding sources during the first three years of operations;
- (ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or
- (iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

* * * * *

PART 2552—FOSTER GRANDPARENT PROGRAM

- 44. The authority citation for Part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

- 45. Amend § 2552.92 by revising paragraph (e) to read as follows:

§ 2552.92 What are project funding requirements?

* * * * *

(e) *How are Foster Grandparent cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

- (i) Initial difficulties in the development of local funding sources during the first three years of operations; or

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

* * * * *

Dated: August 13, 2010.

Tom Bryant,

Associate General Counsel.

[FR Doc. 2010-20525 Filed 8-19-10; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, and 234

[DFARS Case 2008-D011]

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, the interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008. This rule specified when time-and-materials or labor-hour contracts may be used for the acquisition of commercial items, and revised the language to address the conditions under which major weapon systems or subsystems may be treated as commercial items.

DATES: *Effective Date:* August 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra R. Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-8383; facsimile 703-602-0350. Please cite DFARS Case 2008-D011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 74 FR 34263 on July 15, 2009, to implement sections 805 and 815 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Pub. L. 110-181). A correction to the interim rule was published at 74 FR 35825 on

July 21, 2009, to clarify the types of services to which this rule applies, consistent with subsections (c)(1)(A) and (c)(1)(C)(i) of section 805 of the NDAA for Fiscal Year 2008. Section 805 specified when time-and-materials or labor-hour contracts may be used for commercial item acquisitions. Section 815 of the NDAA for Fiscal Year 2008 provided clarification regarding situations under which the procurement of a major weapon system, subsystems of major weapon systems, and components and spare parts for major weapon systems, may be acquired using procedures established for the acquisition of commercial items. Section 815 also clarified that the terms "general public" and "non-governmental entities" with regard to sales of commercial items, do not include the Federal Government or a State, local, or foreign government.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule reinforces existing requirements for the appropriate use of commercial acquisition procedures and for ensuring that contract prices are fair and reasonable.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 202, 212, and 234

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule published at 74 FR 34263 on July 15, 2009, as corrected at 75 FR 35825 on July 21, 2009, is adopted as final without change.

[FR Doc. 2010-20436 Filed 8-19-10; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

Defense Federal Acquisition Regulation Supplement; Transportation (DFARS Case 2003-D028)

AGENCY: Defense Acquisition Regulations System. Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule, with changes, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on transportation matters relating to DoD contracts.

DATES: *Effective Date:* August 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0311; facsimile 703-602-0350. Please cite DFARS Case 2003-D028.

SUPPLEMENTARY INFORMATION:

A. Background

In keeping with the DFARS Transformation initiative objective of improving the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate, DoD issued a proposed rule at 70 FR 43109 on July 26, 2005, to update text on transportation matters relating to DoD contracts, including clarifying certain shipping procedures and offering additional guidance on their use.

This final rule is a result of the DFARS Transformation initiative. The changes to the final rule—

- Delete text on transportation matters that are sufficiently addressed in the Federal Acquisition Regulation or in DoD transportation regulations;
- Clarify requirements for inclusion of shipping instructions in solicitations and contracts; and
- Delete procedures for contracting for the preparation of property for shipment or storage; and for preparation of consignment instructions. Text on these subjects will be relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at <http://www.acq.osd.mil/dpap/dars/pgi>.