

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

RIN 3045-AA41

### AmeriCorps National Service Program

**ACTION:** Final rule.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation") is amending several provisions relating to the AmeriCorps national service program, and adding rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

**DATES:** This final rule is effective September 6, 2005, with specific sections becoming applicable according to the implementation schedule in part VII of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

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#### I. Background

Under the National and Community Service Act of 1990, as amended (hereinafter "NCSA, or the Act," 42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides education awards to, and certain interest payments on behalf of, AmeriCorps participants who successfully complete a term of service in an approved national service position.

On February 27, 2004, President Bush issued Executive Order (E.O.) 13331 aimed at making national and community service programs better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to community organizations, including faith-based organizations. The E.O. directed the Corporation to review and modify its policies as necessary to accomplish these goals.

In the Consolidated Appropriations Act for 2004, Congress directed the Corporation to reduce the Federal cost per participant in the AmeriCorps program and to increase the level of matching funds and in-kind contributions provided by the private sector. The Conference Report accompanying the 2004 Consolidated Appropriations Act directed the Corporation to engage in notice and comment rulemaking around the issue of "sustainability."

On September 23, 2003, the Corporation's Board of Directors (the Board) had directed the Corporation to "undertake rulemaking to establish regulations on significant issues, such as sustainability and the limitation on the Federal share of program costs, consistent with any applicable directives from Congress." On August 12, 2004, the Corporation published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** for public comment (69 FR 50124).

This rulemaking process is one of two the Corporation initiated in 2004, and addresses several significant and time-sensitive issues. The Corporation intends to implement these changes over the next year, with some taking effect in the AmeriCorps 2005 program year, and the remainder in the 2006

program year (See section VII. Effective Dates). The second process stemmed from a recommendation by the Board's Taskforce on Grant-making and is largely an effort to streamline and improve our current grant-making processes. That effort is already underway, and we plan to issue a Notice of Proposed Rulemaking for that purpose later this year. The two rulemakings address distinct and separate issues.

#### II. Preliminary Public Input and Public Comments

##### A. Preliminary Public Input

On March 4, 2004, the Corporation published a notice in the **Federal Register** inviting informal preliminary public input in advance of rulemaking (69 FR 10188). The notice outlined the general topics the Corporation was interested in addressing through rulemaking and posed questions for the public to consider in providing input. Following the notice, the Corporation held four conference calls and five public meetings across the country in Columbus, Ohio; Seattle, Washington; Boston, Massachusetts; Washington, DC; and Arlington, Texas, to frame the issues and collect public input. Through the hearings, conference calls, and e-mail and paper submissions, the Corporation received comments from nearly 600 individuals and organizations, and used this input to inform the drafting of the proposed rule.

##### B. 60-Day Comment Period

In the **Federal Register** of August 12, 2004 (69 FR 50122), the Corporation published the proposed rule with a 60-day comment period. In addition to accepting comments in writing, the Corporation held three conference calls and five public meetings across the country in Philadelphia, Pennsylvania; Atlanta, Georgia; Portland, Oregon; Denver, Colorado; and Chicago, Illinois. During the public comment period, the Corporation received 217 written comments and 78 oral comments from grantees, foundations, State governments, non-profits, Members of Congress, and other interested individuals and organizations.

The comments express a wide variety of 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, the 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 discussed below, the Corporation received some editorial suggestions, some of which we have adopted and some of which we have not. The Corporation has made a number of other minor editorial changes to better organize or structure the regulatory text. Finally, the Corporation received a number of comments on issues outside the scope of the proposed rule, which the Corporation does not address in the discussion that follows.

### III. Terminology Change: FTE to MSY

In the proposed rule, the Corporation defined cost per full-time equivalent (FTE), and referred to cost per FTE throughout the regulation. Until now, the Corporation has used the term FTE to describe the number of service years performed by a full-time AmeriCorps member (each service year being equal to 1,700 hours of service). Because the term FTE is most often associated with budgeting for employee payroll, we are replacing "FTE" with "Member Service Year" (MSY). We think this term more accurately describes units of AmeriCorps service, and we want to avoid any misimpression that AmeriCorps members are Federal employees. Consequently, the Corporation has amended the final rule to refer to cost per MSY, and uses MSY and cost per MSY throughout this final rule in lieu of FTE and cost per FTE, respectively.

### IV. Highlights of Final Rule

This final rule includes a targeted series of reforms designed to strengthen the impact, efficiency, and reach of AmeriCorps, our AmeriCorps grantees, and the Corporation. Our primary objectives are to:

- Create a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership;
- Provide consistency, reliability, and predictability for AmeriCorps grantees;
- Enhance the measurable positive impact of the AmeriCorps program on:
  - Communities and beneficiaries that receive service;
  - Non-profit organizations and community infrastructures that host service; and
  - AmeriCorps members who serve;
- Resolve longstanding issues relating to Federal share, Corporation cost per

member service year (MSY), and sustainability of AmeriCorps projects to minimize uncertainty about annual grantee funding levels and restrictions;

- Assure fiscal and programmatic accountability and effective performance measurement for the Corporation, AmeriCorps, and grantees; and
- Generate additional and wider varieties of grant applicant organizations. In addition, wherever possible, this rule reflects the Corporation's determination to:
  - Eliminate unnecessary paperwork burdens on Corporation grantees;
  - Strengthen AmeriCorps' ability to respond to State and local needs;
  - Engage more community volunteers;
  - Include community organizations, including faith-based organizations, in all Corporation programs; and
  - Invigorate the competitive grant-making process.

Existing and potential AmeriCorps grantees are a strong and diverse group of talented and innovative forces for change, with different needs, circumstances, and abilities. Therefore, the Corporation has endeavored, throughout these regulations, to:

- Use competitive criteria to foster and encourage, rather than require, desired actions or activities; and
- Tailor implementation of the regulatory requirements based on the unique goals and circumstances of grantees, including limited waivers if appropriate.

The Corporation has focused reforms in the final rule on four main areas: Sustainability of AmeriCorps programs, including decreasing grantee reliance on Federal resources and decreasing Corporation costs per MSY; Grant selection criteria; Performance measures and evaluation; and Tutor qualifications and other requirements for tutoring programs. The proposed rule also included a discussion in some detail of several non-regulatory issues including the Corporation's goal of streamlining continuation applications and adjusting grant cycles. As discussed in the proposed rule, the Corporation is undertaking both those reforms outside of these regulations.

The Corporation is publishing these regulations pursuant to the Chief Executive Officer's statutory authority to "prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws." 42 U.S.C. 12651c(c). The Corporation intends to monitor the impact of this final rule on grantees.

The next section of this preamble, section V, addresses sustainability, and

specific issues concerning intermediaries, Education Award Program grantees, and professional corps programs. Section VI includes a section-by-section summary and analysis of the major comments we received and the Corporation's response. Section VII of this preamble addresses implementation of the final rule. Section VIII addresses several non-regulatory policy issues the Corporation considered in light of the public input and comments we received.

## V. Broad Policy Issues

### A. Sustainability

Many of the comments the Corporation received addressed the issue of sustainability. Many suggested that the Corporation had too narrowly defined sustainability in the proposed rule as only including financial or monetary measures, and had given insufficient consideration to other measures of sustainability, such as community support and partnerships, and program quality. Those commenting on the definition generally suggested various revisions on the same theme of defining sustainability broadly and beyond just financial commitments. Two commenters suggested that sustainability be measured by criteria that capture capacity in terms of program quality and cost structure, fiscal and community support, partnerships, and leveraged resources, including volunteer hours and in-kind goods and services. The Corporation agrees that sustainability includes many elements beyond cost, and has modified the rule language in several places to bring greater emphasis on multiple and diverse measures of sustainability.

The Corporation did not intend for the proposed rule to define sustainability solely in terms of money, nor did we intend for sustainability itself to be viewed as the only factor in the grant selection process. The Corporation's intent was to broadly define sustainability and to specify measures of sustainability in the grant selection criteria and program requirements. At the same time, the Corporation does believe that decreasing the federal share of costs for AmeriCorps programs is essential to sustainability, and we have, thus, retained increased matching requirements as a key part of our effort to boost program sustainability.

As stated in the proposed rule, the Corporation's annual appropriation and its authorizing legislation, as well as E.O. 13331, support this approach to sustainability. In our annual appropriations act each year dating back

to fiscal year 1996, and most recently in the Consolidated Appropriation Act for fiscal year 2005, Congress directed the Corporation to “increase significantly the level of matching funds and in-kind contribution provided by the private sector,” and “reduce the total Federal costs per participant in all programs.” Section 133(c)(3) of the Act requires the Corporation to include in its selection criteria the sustainability of the national service program, based on evidence such as the existence of strong and broad-based community support for the program, and of multiple funding sources or private funding for the program. Section 130(b)(3) of the Act authorizes the Corporation to ask an organization “re-competing” for funding after a three-year initial grant period to include a “description of the success of the programs in reducing their reliance on Federal funds.” In addition, E.O. 13331 directs that “national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments.”

While the Corporation is committed to meeting these goals, in our view, they do not require imposing across-the-board limitations on the number of years an organization may receive funds, particularly given the many organizations providing valuable infrastructure and experience that enable national and community service to continue to thrive across the country. At the national level, the Corporation continues to believe it unnecessary to disqualify an organization from receiving Federal funding based on the number of years that organization has received funding. To do so would ultimately result in a loss of some of the strongest organizations with the capacity, infrastructure, and experience to provide high-quality service and deliver results that strengthen and expand national and community service. We do believe, however, that the majority, if not all, of the organizations that receive Corporation funds can and should increase their share of program costs as their programs mature.

Through increased sustainability, the Corporation seeks to expand the national service field and provide new organizations the opportunity to participate in national and community service programs. The Corporation also seeks to strengthen the capacity of existing national and community service programs by promoting an expansion and diversification of their non-Corporation funding sources, and strengthening the competitive framework. At the same time, the

Corporation wants to treat grantees fairly and equitably and avoid impairing their independence, operating flexibility, and autonomy.

As described in more detail below, the Corporation’s strategy to increase organizational sustainability and expand national and community service has six main elements:

1. Incorporates the broad spectrum of sustainability elements throughout the Corporation’s grant selection criteria and program requirements.

2. Increases the emphasis in the selection process on program cost-effectiveness, including using Corporation cost per MSY as one of several measures of cost-effectiveness.

3. Increases, based on a predictable schedule and incremental scale, the grantee share of program costs to a 50 percent overall level by the 10th year in which an organization receives AmeriCorps funding for the same program. Programs in severely economically distressed or rural areas are eligible to apply for permission to meet an alternative match schedule, which would increase their grantee share to a 35 percent overall level by the 10th year in which an organization receives AmeriCorps funding for the same program.

4. Requires State commissions to develop and implement a sustainability approach as part of their oversight function.

5. Targets a percentage of non-continuation AmeriCorps State and national grant funds each year for new applicants.

6. Provides technical support and limited exceptions to organizations that demonstrate hardship in meeting the increasing match requirements.

With the exception of the fourth and fifth elements, which are not included in the regulatory language and which we address immediately hereafter, the individual section discussions that follow in part VI address each of the other elements of sustainability in more detail.

#### State Commission Sustainability Approaches (§ 2550.80(a)(3) in Proposed Rule)

Part of the Corporation’s sustainability strategy is to build upon what some States are already accomplishing in the sustainability arena. The Corporation understands that roughly 25 percent of the State commissions already have written sustainability policies or approaches through which they promote sustainability and encourage new programs in their States. Some States, for example, gradually and predictably

reduce their subgrantees’ Corporation cost per MSY over 12 years, to allow the commission to invest resources in new programs and encourage on-going programs to develop efficiencies and enhance community support. One State commission requires, among other things, that its subgrantees develop their own sustainability plans and increase the subgrantee share of program operating costs over a seven-year period to 75 percent. Some States, in addition to requiring a small increase in program share of member support costs over a three-year period, actively solicit private donations to use, in part, to help local AmeriCorps programs develop relationships with corporate donors and increase private support. The Corporation praises these efforts and encourages State commissions to consider these and other approaches to promote program sustainability in their States.

In an effort to promote these State sustainability efforts, the proposed rule required each State to describe its sustainability approach in its State-wide service plan.

Several commenters expressed confusion regarding the proposed requirement. One viewed this provision as requiring States to duplicate the new Federal sustainability and matching regulatory requirements. One State commission indicated that it may develop additional sustainability requirements for programs in its State, but did not wish to report those requirements to the Corporation. Another commission supported the development of local sustainability plans for States, but sought clarifying language that would leave room for States to determine sustainability for themselves.

The Corporation supports the efforts that States are making towards sustainability in their respective States. Furthermore, the Corporation notes that State commissions may generally choose to impose more stringent requirements on State subgrantees than the Corporation’s requirements. The Corporation’s intent in proposing the reporting requirement was to ensure that each State engage in meaningful discussions about how it should manage its portfolio to maximize long-term impact of programs in the State. The Corporation expects State commissions to consider, in developing their sustainability plans, whether they should add any sustainability requirements to the Corporation’s minimum requirements, as well as what strategies the State may use to develop capacity and sustainability of projects and service in the State.

The Corporation has now concluded that the State-wide service plan (formerly "unified State plan") is not necessarily the best mechanism for obtaining this information. Rather, the Corporation believes that the most efficient way for commissions to report on their sustainability plans is through their administrative funds application. The Corporation plans to add one or more questions to the administrative application through which States will report their sustainability plan efforts. The Corporation is, therefore, removing from the final rule the requirement that State commissions submit a sustainability plan to the Corporation. Paragraph (a)(3) of section 2550.80 in the proposed rule has been deleted.

#### Funds Targeted for New Programs

The Corporation anticipates annually targeting a percentage of AmeriCorps funds for grants to new applicants. To give us the ability to manage our nationwide portfolio and ensure the appropriate mix of programs, the Corporation will determine the category of applicants eligible to receive the targeted funds annually and announce it in the relevant funding announcement.

The target amount will vary, rather than be a fixed amount that the Corporation must use for new programs each year. In some years, the Corporation may receive enough high-quality new program applications to meet or even exceed the target, and in other years, if the new program applications are not of sufficient quality to merit funding, the number of new programs funded may be lower than the amount targeted for that purpose. The Corporation will, to the maximum extent possible, announce the amount targeted for new programs prior to the submission deadline.

One commenter agreed with the Corporation's efforts to support new programs, but expressed concern that this support should not lead to replacing high-quality existing programs with new programs. This commenter supported the Corporation setting aside funding for new programs only under limited circumstances, including: (1) A year when "new" funding represents the majority of the funding available for new and re-competing programs; or (2) a year when there is a substantial amount of new funding made available through an increase in appropriations for AmeriCorps grants of 10 percent or more. In addition, the commenter supported grants awarded out of set-aside funds based on the results of a "truly competitive" process.

The Corporation disagrees with this commenter's suggestions. The

Corporation will determine the target percentage annually based on the availability of appropriations and the projected number of re-competing applications, and publish this information, including posting it on the Web site at [www.nationalservice.gov](http://www.nationalservice.gov), in advance of the selection process. The Corporation will not, however, tie itself now to the specific parameters the commenter suggests. The Corporation will ensure that the process for selecting new programs is competitive and results in the selection of high-quality proposals, as for all its AmeriCorps grant competitions.

Several commenters did not support targeting funds for new programs. Other commenters noted that competition is the best way to increase the number and diversity of organizations funded over time. The Corporation views targeting funds for new programs as an important incentive for new organizations to consider applying for AmeriCorps funds, when they otherwise might not. The Corporation acknowledges that its legislative requirements can appear daunting to organizations unfamiliar with AmeriCorps or new to national and community service, particularly when competing with existing organizations that have had the opportunity to learn from experience. The Corporation therefore hopes that, by targeting funds for new programs, more new organizations will apply, thereby increasing the likelihood that more new programs will receive funding. The Corporation will award all of its AmeriCorps funds, including those targeted for new programs, through rigorous competition, to ensure that we fund the best possible programs that will demonstrate strong results and help address our communities' unmet needs.

One commenter asked whether the Corporation would announce the amount we would target for new programs before the selection of grantees or prior to the submission deadline. While the Corporation will generally announce the amount of funds we will target for new programs before the submission deadline, in some years, we may not receive our appropriation until close to the application deadline or after applications are due. In that case, the Corporation would announce the amount targeted for new programs as soon as possible after receiving our annual appropriation.

Several commenters asked that the Corporation specify the annual percentage, or at the very least the maximum annual percentage we will target for new programs. The Corporation cannot specify in this rule how much—if any—we will target for

new programs each year because the target amount will depend each year on the level of our annual appropriation, as well as the number of continuation programs and the level of their respective grant requests.

One commenter asked whether States would be required to set-aside a percentage of their formula funds for new programs. The Corporation will not require States to set aside or target formula funds for new programs, although a State may choose to do so.

Another commenter suggested the Corporation hold a competition to determine the best quality programs before targeting money for new programs. The Corporation intends only to fund high-quality programs and does not believe it necessary to determine the quality of applications through a separate process. As discussed above, the amount the Corporation annually targets for new programs will not be a fixed amount. If the Corporation has any remaining funds from the amount allocated for new high-quality programs that year, the Corporation will make these funds available to re-competing and continuation grantees.

#### Other Sustainability Issues

Several commenters expressed concern that the Corporation's proposed sustainability strategy may in fact jeopardize programs in low-income and economically-distressed regions of the country. As discussed more fully in the section dealing with increased grantee share, the final rule accommodates programs located in rural or severely economically-distressed areas of the country that are unable to meet the higher match requirements by allowing them to request a waiver that would qualify them for an alternative lower match requirement. The rule also includes programs in rural and severely economically-distressed areas in the list of programs eligible for special consideration in the competitive selection process.

One commenter expressed concern that fundraising costs are currently not included in the budgets submitted to the Corporation, obscuring the true cost of doing business as an AmeriCorps program. This commenter suggested that, given the increased emphasis on program fundraising and increased match, the Corporation request an exception from the Office of Management and Budget to allow development costs to count as match or be reimbursed. It is government-wide Federal policy that fundraising costs are not reimbursable, and the Corporation can find no basis upon which it may deviate from that policy. Many other

Federal grant programs require a 50 percent match without corresponding OMB waivers relating to development costs.

Another commenter suggested that the Corporation apply different, presumably less rigorous, sustainability requirements and measures to “stand alone” AmeriCorps programs—that is, organizations whose sole purpose is to carry out AmeriCorps. Again, the Corporation does not find sufficient merit to the suggestion to make a change in the final rule. Sustainability is one of the core principles of this rule. While the final rule carves out some limited exceptions to the sustainability requirements, the characteristics of a “stand-alone” AmeriCorps program are not sufficiently different from other AmeriCorps programs to warrant different treatment. Moreover, the Corporation wants to avoid creating a disincentive for an organization to diversify its activities.

In several places in this final rule, the Corporation makes a distinction between compliance with a requirement and performance under the competitive selection criteria. For example, the final rule requires programs to recruit or support volunteers, unless the Corporation waives the requirement. At the same time, the selection criteria for AmeriCorps grants include volunteer recruitment and support as a competitive criterion. A proposal that does not include volunteer recruitment or support will potentially score lower in that category, regardless of whether, ultimately, the Corporation waives the volunteer recruitment or support requirement when making an award. Similarly, in the area of match, the Corporation is establishing minimum requirements for grantees that the Corporation will enforce, generally upon closing out a grant. If a grantee has not met its minimum required match, the grantee will have to repay funds to the Corporation. The selection criteria, on the other hand, look at match also from a performance perspective: An organization’s failure to meet its budgeted match may negatively impact its success in the competitive process, but will not translate into a requirement that the organization repay funds. When considering the final rule, one should bear in mind this distinction between compliance and performance.

The Corporation believes that its approach represents a fair, equitable, and authoritative resolution of the issue of programmatic, organizational, and financial sustainability. The rules are authorized by, and consistent with, our enabling legislation, and support our goals of supporting and strengthening

high-quality programs while leveraging Federal resources to achieve the greatest benefit possible for our nation’s communities. Predictability and consistency are crucial elements of this rulemaking. Thus, we seek to provide clear guidance to our grantees on our long-term expectations for sustainability, which we believe conclusively resolves the issue.

#### *B. Intermediaries*

The Corporation received significant public comment regarding intermediaries and, in particular, the potential effect on those entities of efforts to promote sustainability. There is, and should continue to be, a prominent place for intermediaries in the national and community service portfolio, particularly given their important role in reaching smaller community organizations, including faith-based organizations. The Corporation recognizes that many intermediary models include a regular infusion of new sites, which, as with any new program, may have higher costs initially. In designing the selection criteria, the Corporation has explicitly recognized the potentially higher cost of some intermediary models.

One commenter suggested that the Corporation define “intermediary” as a program that “places members in community-based and faith-based organizations in specific communities.” This commenter indicated that these intermediary model programs are more expensive because they take on new partnerships each year and must manage multiple partnerships. The higher relative cost of these intermediary models should, according to this commenter, be recognized in the selection criteria for cost-effectiveness. As discussed in the selection criteria below, the cost-effectiveness criteria specifically take into account, among other things, the higher relative costs of programs that either bring on new sites or engage or serve difficult-to-reach populations. As far as defining “intermediary,” the suggested definition is, based on the Corporation’s experience, too imprecise. The Corporation has spent considerable effort examining intermediaries and has determined that its portfolio of grantees includes many different models of intermediary, such that including a cost-effectiveness criterion for a multi-faceted category of organizations would not be appropriate or workable.

The Corporation has set matching requirements generally at the grantee or parent organization level, rather than at the member placement or service site level, and we have not adjusted the

matching requirements based on the proportion of new sites in any given year. We believe that establishing the matching requirements at the parent organization level gives greater flexibility to intermediaries to manage and achieve a healthy mix of new and established sites. As discussed more fully below in section VI(C), the Corporation is sensitive to the fact that the increased match requirements may create obstacles for some intermediary organizations. In particular, the Corporation is concerned about intermediary organizations that place members in small and new grass-roots organizations in needy communities, and rely on those communities to contribute matching resources to the intermediary in order to participate.

#### *C. Education Award Programs (EAP)*

The Education Award Program (EAP) allocates education awards to national, State and local community service programs that can support most or all of the costs associated with managing the service of AmeriCorps members from sources other than the Corporation. Several commenters recommended that the final rule clarify the extent to which its provisions apply to Education Award Programs (EAP). One commenter recommended that EAP grantees be exempted from all “irrelevant sections,” including those referring to match generation, volunteer generation, evaluation, and health care.

The final rule explicitly excludes Education Award Program grantees from its provisions where necessary, and as described herein.

#### *EAP—Sustainability and Cost Effectiveness*

Several commenters opined that the discussion of sustainability and its related implementation simply should not apply to EAP grantees. These commenters believe that EAP programs are the epitome of sustainability, because they already manage programs with minimal financial assistance from the Federal Government, other than the education award that members receive for completing a term of service. In particular, these commenters opposed using cost per MSY as a selection criterion for Education Award Program grantees, as these grantees receive fixed amount grants of \$400 per MSY currently. Two commenters indicated that EAP programs invest significant amounts of non-Corporation resources in their programs, and they are concerned that the Corporation has not recognized or rewarded that investment in considering program sustainability.

In the final rule's selection criteria, the Corporation has retained Corporation cost per MSY as an important factor to consider in determining a program's cost-effectiveness for programs other than Education Award Program grantees. For Education Award Program grantees, the Corporation has included explicit language to make clear that Corporation cost per MSY is not a factor in considering their cost-effectiveness. However, other measures of cost-effectiveness will apply to Education Award Program grants.

The Corporation agrees that the EAP program is a clear example of a sustainable program from a financial perspective. The Corporation is aware of the significant financial contribution and investment that EAPs make in their programs and the relatively small amount of money they receive from the Corporation. The question, in evaluating EAP programs in the selection process, is the extent to which they can demonstrate sustainability in other ways. For example, an EAP program will fare better in the competitive process if it can show that its program is having a sustainable impact in the community, or its members are continuing to show, post-service, an ethic of service.

One commenter asked whether the current \$400 cost per MSY for EAP programs would be increased. Another commenter indicated that the Corporation's reporting requirements have become increasingly burdensome, while the cost per MSY for Education Award Programs has steadily declined. Whether or not to increase the \$400 cost per MSY is outside the scope of this regulation. The Corporation, as indicated below, is committed to streamlining its reporting requirements while ensuring accountability and sustainability, and will continue to work towards that goal for all its grantees.

#### EAP—Member Service Activities

Sections 2520.20 through 2520.55 of the final rule address allowable member service activities, and include a requirement that some component of each AmeriCorps program must involve recruiting or supporting volunteers. As discussed in part VI, encouraging more Americans to engage in service and volunteer activities is one of the pillars of our sustainability goals. Like any other AmeriCorps applicant, any EAP grantee that believes recruiting or supporting volunteers would fundamentally alter its program model may apply for a waiver of this requirement.

#### EAP—Non-Displacement of Volunteers

The proposed rule stated that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community, including partial displacement such as reducing a volunteer's hours. As discussed below in the section addressing the non-displacement of volunteers provision (§ 2540.100), the Corporation has amended that section to remove these particular references to volunteer hours, in favor of a broader focus on addressing unmet needs. The Corporation will enforce this rule for all AmeriCorps programs, including EAP programs.

#### EAP—Performance Measures

The Corporation expects all its grantees, including EAP grantees, to adhere to performance reporting requirements. Performance measures are critical to demonstrating that national and community service programs are having their intended impact in our communities.

#### EAP—Evaluation

The proposed rule clearly indicated that EAP grantees would not be required to perform an independent evaluation of their programs. The final rule, while not requiring an independent evaluation, will require EAP grantees to perform an internal program evaluation, and submit that evaluation with the appropriate recompete application. This provision is consistent with the requirements in the NCSA.

#### D. Professional Corps

Professional Corps programs place members as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet unmet needs in communities with an inadequate number of such professionals. Professional Corps programs pay 100 percent of the member support costs, but receive operating funds and an allocation of education awards for their members. Several commenters reiterated their desire that the Corporation establish separate application guidelines for professional corps programs to reflect the fact that they are responsible for 100 percent of the benefits paid to AmeriCorps members, and that their program model may be inconsistent with some of the general program requirements, such as volunteer recruitment and required training. The Corporation believes, however, that most program requirements can and should apply to all AmeriCorps programs, including Professional Corps

programs, and therefore does not necessarily see a need for separate guidelines. If a program demonstrates, in its funding application, that its program design is incompatible with the requirement to recruit or support volunteers, the Corporation will consider waiving the requirement that programs recruit or support volunteers.

In addition, the Corporation has already taken the extra step of soliciting proposals for Professional Corps programs in a separate NOFA, and envisions doing so again in the future. The Corporation believes, however, that professional corps programs, particularly those for which the cost is largely borne by sponsoring organizations, will continue to compete well in all our AmeriCorps grant competitions. By grouping similar program models together in our selection process, the Corporation will ensure, to the maximum extent possible, that professional corps programs are evaluated together. The Corporation believes that all of these steps obviate the need for a separate set of application guidelines for professional corps programs.

Several commenters asked whether the Corporation intends for all teaching fellows programs to apply under a professional corps NOFA, rather than as Education Awards programs. Professional corps may apply under other applicable NOFAs, such as AmeriCorps State, National, or EAP, in addition to any applicable Professional Corps only NOFA.

#### VI. Specifics of the Final Rule and Analysis of Comments

As discussed in more detail below, the final rule:

- Defines the term "target community" as the geographic community in which an AmeriCorps grant applicant intends to address an identified unmet need.
- Defines the term "recognized equivalent of a high-school diploma" as including documents recognized for this purpose by the U.S. Department of Education.
- Clarifies the types of service activities in which AmeriCorps members may engage and explains the parameters for grantees and members to engage in capacity-building service activities, including volunteer recruitment and support.
- Increases, in an incremental and predictable fashion, the grantee's required share of program costs to a 50 percent overall match plateau over 10 years; provides alternative matching requirements for programs located in rural and severely economically

distressed communities, increasing the grantee's required share of program costs to a 35 percent overall match plateau over 10 years.

- Codifies that the amount of childcare payments the Corporation makes to an eligible provider on behalf of an AmeriCorps member may not exceed the amount authorized under the Child Care and Development Block Grant Act of 1990 (Pub. L. 101-508).

- Codifies the grant selection process and criteria.

- Clarifies how grantees are to calculate their budgeted Corporation cost per member service year (MSY).

- Codifies the Corporation's requirements for grantees to establish performance measures and to evaluate program outcomes, and establishes a grant amount threshold for required independent evaluations.

- Establishes qualifications for members serving as tutors and requirements for tutoring programs.

- Prohibits displacement of volunteers.

- Removes obsolete references to "transitional entities" serving as State commissions on national and community service.

- Broadens State commission flexibility to operate specified national service programs directly.

#### *A. Definition of "Target Community" and "Recognized Equivalent of a High-School Diploma" (§ 2510.20)*

##### Target Community

In the proposed rule, the Corporation defined the term "target community" as the geographic community for which an AmeriCorps grant applicant identifies an unmet human need. The Corporation assumed that educational, environmental, and public safety needs were all subsumed within the term "human need."

Two commenters interpreted this language as excluding educational, environmental, and public safety needs from the definition. In order to clarify our intent, the Corporation has amended the language to specifically include educational, environmental, and public safety needs (including disaster preparedness and response), in addition to other human needs. The Corporation has also made technical changes to the definition to make it clearer.

##### Recognized Equivalent of a High-School Diploma

In reading the comments on the proposed tutor requirements, the Corporation concluded that grantees were not clear that the term "high-school diploma or its equivalent" means

more than simply a high-school diploma or a GED. For the sake of clarity, the Corporation is including a technical amendment to § 2510.20 to clearly define what is a recognized equivalent to a high-school diploma. The definition incorporates the Department of Education's definition of the equivalent to a high-school diploma. Under the Department of Education's regulations (34 CFR § 600.2), the equivalent to a high-school diploma includes not only a GED, but also (1) a State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent to a high-school diploma; (2) an academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit towards a bachelor's degree; or (3) for a person seeking to enroll (or enrolled) in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

#### *B. Member Service Activities on Behalf of the Organization (§§ 2520.20 Through 2520.60)*

Except for those member activities specifically prohibited in sections 132 and 174 of the Act, as amended, the Corporation has broad authority to determine appropriate service activities for AmeriCorps members. In the proposed regulation, the Corporation largely codified and clarified the Corporation's current guidelines and grant provisions on this issue. Specifically, the proposed rule clarified that AmeriCorps members may: (1) Perform direct service activities, and (2) engage in other activities that build the organizational and financial capacity of nonprofit organizations and communities, including volunteer recruitment and certain fundraising activities.

Several commenters supported allowing AmeriCorps members to be involved in capacity-building, including fundraising activities. Others expressed concern that AmeriCorps may be diluting its mission by allowing members to engage in capacity building activities, rather than direct service exclusively. One commenter opposed members engaging in anything other than direct service, on the basis that partner organizations are providing matching resources for direct services provided onsite, such as tutoring during

the school day. Another commenter expressed the hope that this policy of allowing member capacity-building activities remain an opportunity for programs, but not become a mandate.

The principal purpose of AmeriCorps is still direct service and "getting things done" in our communities and our country. With the exception of the requirement that programs recruit or support volunteers, the final rule does not require that programs allow members to engage in any other capacity-building activities. The final rule merely permits members to engage in such activities, at the discretion of the program. That said, the Corporation believes that AmeriCorps members and AmeriCorps funds have the ability to leverage resources and increase the capacity of the organizations with, and the communities in which, they serve. The Corporation sees no compelling reason to limit members only to direct service, as valuable as that is, when they could also be recruiting or supporting volunteers, helping to raise funds for their projects, and helping to build sustainable service in their communities. Because these activities promote sustainability, which is one of the primary reasons for this rulemaking, the final rule remains unchanged from the proposed rule in terms of permitting members to engage in both direct service and capacity-building activities.

One commenter recommended adding K-12 education as a fifth example under "developing collaborative relationships with other organizations working to achieve similar goals in the community" in § 2520.30(b)(4). The Corporation agrees that including K-12 education in that section is appropriate, but believes that the broader category of "local education agencies or organizations" is the most appropriate descriptor. Consequently, the Corporation has added "local education agencies or organizations" as a fifth example in § 2520.30(b)(4).

##### AmeriCorps Members Serving With Faith-Based Organizations

The Corporation received comments from several organizations about AmeriCorps members serving with faith-based organizations. Of the comments relating to matters in the proposed rule, one recommended that the Corporation clarify the final rule to ensure that activities on behalf of participating organizations meet statutory and constitutional safeguards regarding religious activity. Specifically, this commenter recommended that §§ 2520.20 through 2520.65 be amended to acknowledge the statutory restrictions on member activities. Another

commenter recommended that the Corporation develop and provide clear guidance for AmeriCorps programs working with faith-based organizations.

The redesignated section 2520.65 (formerly § 2520.30) of the regulations addresses AmeriCorps members' prohibited activities, including those relating to religious activities. The Corporation believes that these prohibitions are sufficiently clear, and further that it would be outside the scope of this rulemaking process to amend them at this time.

One commenter suggested that the regulations require faith-based organizations that receive AmeriCorps funds to establish a separate corporate structure to receive and segregate government funds and the capacity-building activities thereby supported. The Corporation disagrees with this suggestion. While an organization is free to establish a separate account for its Corporation funds, it would be unfair to require faith-based organizations to comply with these additional burdens. Except for the Education Award Program, which offers a modest fixed amount grant, the Corporation requires all its grantees to track their Corporation funds separately and to ensure that they use their Corporation funds only for reasonable and necessary expenses and permissible program activities.

#### Volunteer Recruitment or Support (§ 2520.35)

One focus of Executive Order 13331 is leveraging Federal resources "to enable the recruitment and effective management of a larger number of volunteers than is currently possible." The proposed regulations clearly directed that some component of an AmeriCorps grant must help build the long-term capacity of nonprofit organizations and the community by recruiting and supporting volunteers. While this has implicitly been a requirement over the past two years, clarifying and reinforcing this requirement in regulation is expected to encourage more Americans to engage in service and volunteer activities, and advance program goals.

One commenter stated that its new homeland security program was successful because AmeriCorps became a tool for partnering with local American Red Cross chapters to maximize the effectiveness of community volunteers by offering them a structured, supervised and coordinated volunteer experience.

On the other hand, several other commenters expressed reservations about the proposed requirement that programs recruit or support volunteers.

One commenter stated that it would "not be an effective use of resources to pull AmeriCorps into volunteer recruitment," and that the regulation should be broadened to allow AmeriCorps members to support existing volunteer efforts, rather than requiring every program to generate and recruit volunteers. The language in § 2520.35 of the proposed rule specifically gives programs the option of recruiting or supporting volunteers—it does not require all programs to recruit volunteers. Some programs, for example, may not be able to recruit volunteers, but may be able to support volunteers recruited by other organizations. The Corporation, therefore, has not changed the language in this section of the final rule.

Several commenters stated that the recruitment, supervision, and training of volunteers requires higher levels of training and management skills than members generally have, and detracts from direct service and service outcomes. One of these commenters suggested that the Corporation encourage volunteer recruitment, rather than require it. Another commenter stated that the Corporation should not stress sheer numbers of volunteers to the detriment of quality service and effectiveness. In particular, this commenter suggested that the Corporation should guard against taxing the volunteer base beyond its capacity, bearing in mind that all its streams of service, including AmeriCorps State and National, AmeriCorps VISTA, Learn and Serve, as well as Citizen Corps, America's Promise, and the Points of Light Foundation, are recruiting from the same pool of potential volunteers.

As stated in the proposed rule, the Corporation does not intend for this requirement to distract from an organization's mission, nor do we expect grantees to replace direct service with volunteer generation and other capacity-building activities. In most cases, direct service and volunteer recruitment or support can complement each other to strengthen programs and communities. When considering how an AmeriCorps program can promote the effective involvement of volunteers, applicants have the flexibility to determine the best way to enhance or build upon the direct service goals of the program in which the AmeriCorps members are serving and to propose capacity-building activities accordingly. The Corporation strongly believes that most, if not all, programs can support the goal of increasing and supporting volunteering in this country.

As discussed in the proposed rule, however, the Corporation recognizes

that some program models, such as certain professional corps, youth corps, and programs in some rural locations with a limited volunteer pool, may not be able to include significant volunteer recruitment or support in their program model, and the Corporation will take these and other factors into account in considering requests to waive the requirement that programs recruit or support volunteers.

The Corporation is maintaining the requirement that programs recruit or support volunteers as currently drafted. We believe that requiring programs to recruit or support volunteers is central to the Corporation's mission of leveraging resources.

One commenter was concerned that many of the member activities permitted by the proposed rule are currently activities performed either by volunteers or employees. This commenter, therefore, read the proposed rule as encouraging displacement of volunteers and employees. In fact, the Corporation prohibits displacement of volunteers and employees. The Corporation only funds programs whose activities add value beyond what would occur in the absence of our funding. Any program that simply replaces volunteers or staff with AmeriCorps members performing the same activities will, by definition, be unable to demonstrate that its program adds value and meets unmet needs in the community.

One commenter saw a disparity between full-time programs and part-time programs in terms of their ability to recruit and support volunteers, and the potential for the Corporation to favor full-time programs. This commenter's view was that a full-time program has more resources upon which to draw when recruiting volunteers and thus an advantage in the grant selection process. The Corporation does not favor full-time over part-time programs, or vice versa. The Corporation seeks to achieve the best use of its resources in light of priorities and funding constraints. In applying its selection criteria, the Corporation has sought to take into account similarities and differences between programs, including part-time and full-time programs. A program of members serving less than full-time would have the opportunity to articulate in its application the challenges it faces in meeting any particular requirement or selection criterion, including the volunteer support requirement.

Several commenters asked whether a program in which AmeriCorps teaching fellows guide K-12 students in a service-learning project could count those students as volunteers for purposes of the volunteer support



component. These commenters said that most Teaching Fellows Programs have a service-learning requirement and that, given the increasing use of service-learning in K–12 schools as a way to connect academic learning to service, it would be helpful to see this reflected in the new rule. One commenter recommended that the section be renamed “Volunteer Recruitment or Service Learning” to ensure that AmeriCorps won’t be criticized for counting mandatory K–12 class activities as “volunteer” work.

The Corporation intends to interpret the requirement that programs recruit or support volunteers broadly so as to allow a program to count as volunteers any volunteer activity generated, supported, or coordinated by its AmeriCorps members for purposes of requirement. A program could therefore expect to count as volunteers students engaged in service-learning projects under the supervision of AmeriCorps members. The Corporation does not believe it is necessary to rename the regulatory section to specifically include service-learning, as we will broadly interpret the term “volunteers,” as used in this section.

#### Waiver of Requirement To Recruit or Support Volunteers

Several commenters requested that the Corporation clearly define the method and timing for requesting a waiver from the requirement to recruit or support volunteers, and implement it as part of a pre-application process. Three commenters added that the rule should clearly state that applying for a waiver will not negatively affect a proposal’s success in the grant selection process.

The Corporation views volunteer recruitment and support as both a requirement and a competitive criterion in the grant selection process. The Corporation expects that a program that believes it is unable to fulfill the requirement to support or recruit volunteers will address that inability in its application and thereby request a waiver from the requirement. While a waiver request itself will not disadvantage an applicant, failure to address volunteer recruitment or support at all will be a disadvantage in the grant selection process. That said, the extent to which a program recruits or supports volunteers is but one criterion in the grant selection process—the Corporation does not expect that every applicant will be able to meet or demonstrate it can fulfill every criterion. In order to succeed in a competitive grant making process, a program unable to include volunteer recruitment or

support will simply have to deliver more with respect to other selection criteria.

If the Corporation is ready to negotiate an applicant’s award, and the applicant has requested a waiver, the Corporation will then decide whether to relieve the particular program of the requirement to support or recruit volunteers. The Corporation needs the flexibility, in building our portfolio, to balance the types of programs we will fund. Providing a pre-application waiver, which would essentially entail reviewing an applicant’s entire application outside of the competitive process to assess the program design, would undermine our ability to achieve that balance. Furthermore, it would not be the best use of our resources to consider waiver requests for applications that we have not yet determined to be of sufficient quality to receive funding.

The Corporation reiterates, however, that a State commission can require its subgrantees to include volunteer recruitment and support, without regard to whether the Corporation might be willing to waive the requirement. Applicants applying for funding through a State commission will be required to request a waiver from the requirement to support or recruit volunteers through the State commission. We expect a commission to forward requests for waivers only from those applicants for whom the commission has approved the initial request. The Corporation will leave to State commissions the determination of whether a formula applicant effectively makes the case for a waiver from the requirement to support or recruit volunteers, but expects State commissions to make these decisions judiciously. The Corporation will include waiver application instructions in the grant application instructions.

#### Fundraising (§ 2520.40)

The proposed regulation also clarified that AmeriCorps members may help organizations raise resources directly in support of service activities that meet local environmental, educational, public safety, homeland security, or other human needs. The proposed rule allowed members to participate in a wide range of fundraising activities if these activities make up only a relatively small amount of any individual member’s overall service hours. It also allowed members to write grant applications excepting those for AmeriCorps or any other Federal funding. The Corporation believes that these activities could enhance the use of AmeriCorps members to build the

capacity of nonprofit organizations, and advance the professional development of the members themselves.

The proposed rule’s provisions governing fundraising were more flexible for AmeriCorps members than those for grantee staff, who are subject to Federal cost principles described in the Office of Management and Budget Circulars that generally disallow costs incurred in organized fundraising.

Several commenters were supportive of AmeriCorps members being allowed to engage in fundraising, but had areas of concern. In particular, several commenters felt it was as important for program staff to be allowed to engage in fundraising on AmeriCorps time. Specifically, some commenters opined that if members may engage in fundraising, staff must be able to do so in order to coach, train, and supervise the members, and that absence of this ability for staff may fail to produce positive results.

The OMB circulars set the parameters for allowable expenses and specifically identify the cost of development officers and fundraising staff as unallowable expenses. It would be inconsistent with government-wide rules for the Corporation to allow otherwise. Thus, the final rule is the same as the proposed rule with respect to the restrictions on staff fundraising.

One commenter stated that the language in § 2520.40(a) and (c)(1) implies that members may raise resources for program operating expenses, including staff salaries, travel, supplies, and, equipment. At most nonprofit agencies, according to this commenter, this type of fundraising is the responsibility of paid staff. The Corporation’s intent is merely to give grantees flexibility to allow members to engage in fundraising for reasonable and necessary costs attributable to the AmeriCorps project, which may, in certain circumstances include the type of expenses this commenter has listed. The Corporation is, in no way, requiring that members engage in fundraising. If programs do use members for fundraising, the programs will nonetheless have to ensure they can continue to meet performance expectations and show results.

One commenter suggested that the rule specifically allow members to engage more broadly in organized fundraising, “including financial campaigns, endowment drives, solicitation of gifts and bequests” and similar activities performed “solely to raise capital or obtain contributions.” The Corporation’s intention was to limit member fundraising to support for the program or project with which they are

servicing, and its approved program objectives. Member fundraising was not intended to support on-going broad organizational fundraising objectives. The final rule does not incorporate the suggested change.

Two commenters questioned the efficiency and cost effectiveness of having members help with fundraising. One stated that fundraising is a skill that requires contacts and grant writing abilities that develop over several years. The other commenter felt that many organizations use professional fundraisers and that the obstacle to raising resources is not lack of volunteer fundraisers, but rather the economy. The Corporation takes no position on whether or not having members engage in fundraising is efficient. Some organizations with limited resources may find it useful to use AmeriCorps members for some limited fundraising. Other organizations may not. Ultimately, it is up to the individual program to decide whether, and to what extent, to allow members to engage in fundraising activities. If a program does intend for its members to engage in fundraising, the program should inform prospective members that fundraising will be one of their activities. The Corporation's goal is simply to increase the flexibility of the rules in this area to enable programs to achieve results.

One commenter asked that the Corporation clarify that including member fundraising in a program design will not advantage that program in the AmeriCorps grant selection process. The Corporation will not consider member fundraising as a competitive factor in selecting applicants, and an applicant's decision to have or not have members fundraise will not have a bearing on the selection process. While the Corporation will not judge whether a program chooses to have members engage in fundraising activities, we may assess, either during review or as part of our monitoring and oversight function, whether the fundraising activities are reasonably connected to the program's ability to carry out its objectives and meet its performance measures.

#### Limitation on Time Spent Fundraising (§ 2520.45)

In the proposed rule, the Corporation limited the time any individual member may spend fundraising to not more than 10 percent of that member's term of service. Several commenters requested that the Corporation define recordkeeping requirements for tracking member fundraising and ensure that they are not overly burdensome to programs. The Corporation will require programs to identify fundraising on

member time-sheets, just as they currently identify hours that members spend training. Again, member fundraising is an option, not a requirement. If a program chooses to have members engage in fundraising, the program must track and report on the number of hours members spend on fundraising activities.

Several commenters believed that the 10 percent cap on hours spent fundraising should be counted in the aggregate across the program, as it has been for training and education activities, rather than member-by-member. Another commenter proposed that members be allowed to exceed 10 percent of their time on fundraising when fundraising activities are geared toward efforts to build organizational capacity and expand services. The Corporation's goal in establishing a member-by-member limit is to ensure that any one member does not spend a disproportionate number of hours on fundraising activities. Consequently, the Corporation has left the 10 percent limit on a per-member basis. In addition, the Corporation considers 10 percent, or the equivalent of 170 hours for the average full-time member, as sufficient to allow for a meaningful member contribution in this area. The Corporation, therefore, has not increased the maximum allowable percentage in the final rule.

#### Clerical and Administrative Activities (§ 2520.65 in Proposed Rule)

Prior to issuing the proposed rule, the general rule prohibited AmeriCorps members from engaging in clerical activities as part of their service, except if incidental to direct service, or if the Corporation authorized otherwise in connection with homeland security or other activities. The general expectation and practice among AmeriCorps grantees was that members did not perform clerical activities, except as an incidental part of their direct service. In the proposed rule, the Corporation increased grantees' ability to allow members to perform clerical activities, up to a 10 percent cap of each member's term of service.

Many commenters opposed allowing members to perform any administrative duties. One commenter was concerned that this provision would create an incentive to take members away from direct service activities. Two other commenters were concerned about members supplanting the duties formerly performed by employees. Another commenter was concerned about the administrative burden of keeping records to document compliance with this limitation. Another was concerned that one of the

reasons that individuals join AmeriCorps is because they believe they will be doing real service work and making a difference, and not to do clerical work as part of their regularly expected or scheduled activities.

The Corporation agrees that the proposed rule did not sufficiently consider the potential for these and other unintended consequences. The Corporation is, therefore, removing from the final rule § 2520.65 that would allow 10 percent of a member's term of service to be spent on administrative activities, and thereby returning to the current policy. The common expectation among program directors and AmeriCorps members should be that members may not engage in unreasonable amounts of clerical activities, except in exceptional circumstances as approved by the Corporation. The Corporation believes that the best way to resolve issues relating to members engaging in more significant clerical activities is for Corporation staff to address them on a case-by-case basis directly with grantees as a program quality issue. In limited circumstances, the Corporation may approve a member performing more extensive clerical duties in connection with disaster relief, or other compelling community needs. For example, we might approve a member engaging in some limited amount of clerical activities to lend support to an organization whose regular staff has been called up in the armed forces. On the other hand, it would be inappropriate for an individual to be performing clerical work for extended periods as a part of his or her daily responsibilities in a program not faced with a compelling need as described above.

#### Fee-for-Service Activities (§ 2520.55)

The proposed rule authorized programs, where appropriate, to collect fees for services provided by AmeriCorps members. One commenter was concerned that allowing fee-for-service in AmeriCorps programs could result in programs competing with other nonprofits and for-profits. The Corporation, consistent with government-wide OMB circulars, has always allowed fee-for-service activities under limited circumstances. For example, an AmeriCorps program that provides inoculations might reasonably charge a nominal fee for providing flu shots, in order to defray costs of the medication. The Corporation does not anticipate that programs will charge the public for every service they provide. In addition, the Corporation's goal is to fund programs meeting unmet needs. We, therefore, do not anticipate

programs will be providing a service that already exists elsewhere in the program's community. For sake of clarity, the Corporation has modified the language in § 2520.55 to state that organizations may choose to collect fees for service under certain circumstances, rather than encouraging them to do so. The final rule maintains the language from the proposed rule that fees-for-service must be considered program income and used to finance the program's non-Corporation share of costs.

#### "80/20 Rule" and Education and Training Activities (§ 2520.50)

In the proposed rule, the Corporation codified its longstanding so-called "80/20" rule, which limits a program's aggregate number of hours for education and training activities to not more than 20 percent of its members' total service hours. Two commenters opposed the 20 percent limit for training and educational activities, particularly for programs engaged in tutoring. One of these commenters asked that the limit be raised to 25 percent; the other asked that it be raised to 30 percent. The Corporation continues to believe that 20 percent is an appropriate limit on training and education activities to ensure that programs are able to meet their programmatic objectives, and the final rule remains unchanged in that regard. However, the Corporation is establishing the base for the aggregate 20% limitation as the number of hours members agree to perform in their term of service, as reflected upon their enrollment in the National Service Trust. This clarification will alleviate the audit problem programs face when members are released from the program before completing the agreed-upon term of service, and the program has provided a large part of its training agenda at the beginning of the program year.

#### *C. Increase in Required Grantee Share of Program Costs (§§ 2521.35 Through 2521.90)*

Sections 121 and 140 of the Act require an AmeriCorps grantee to provide not less than 25 percent of operating costs and 15 percent of member support costs. The Corporation has the discretion under the statute to increase the minimum grantee share of costs, and did so in 1996, when we increased the grantee share of operating costs from 25 percent to 33 percent.

Section 130 of the Act explicitly authorizes the Corporation to ask an organization applying for renewal of assistance (or "recompete" funding) after an initial three-year grant period to

describe how it has decreased its reliance on Federal funding. In addition, in our annual appropriations act each year dating back to fiscal year 1996, including most recently the Consolidated Appropriations Act for fiscal year 2005, Congress has directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector," and to "reduce the total Federal costs per participant in all programs." Finally, E.O. 13331 directs that "national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments."

Consequently, the proposed rule increased, in a predictable and incremental fashion, the grantee share of program costs to a 50 percent aggregate (overall) level by the 10th year in which an organization receives AmeriCorps funding. Under the proposed rule, each grantee was required to meet the current minimum requirements of 33 percent match (cash or in-kind) for operating costs and at least 15 percent match (non-Federal cash only, except for health care benefits) for member support costs. After meeting those minimum requirements, the grantee could meet the balance of its aggregate share of costs through any combination of operating or member support matching resources.

To avoid confusion about the terms "aggregate share" and "aggregate match" as used in the proposed rule, the Corporation has changed the terminology in the final rule to refer to an "overall match" or "overall share." The overall match or share is the total of the program operating costs match and the member support match that the program must provide starting in the fourth year the program receives a grant. For example, consider an AmeriCorps grant with a total budget of \$400,000—\$200,000 for member support that includes such items as the living allowance, FICA, worker's compensation, unemployment insurance, and health care costs, and \$200,000 for program operating costs that includes staff, operating, and administrative costs. Current matching requirements would call for this grantee to provide at least 15 percent of member support costs (\$30,000) and 33 percent of operating costs (\$66,000). In this example, the minimum overall grantee share is \$96,000, or about 25 percent. By year 10 with the same total budget, the program must provide \$200,000 overall towards the \$400,000 budget.

In the proposed rule, the new matching requirements began in the

fourth year and increased in each year thereafter in which an organization received a program grant up to a 50% overall match by the tenth year an organization continued to receive funding for the project.

The proposed rule established that a current grantee or subgrantee that had received an AmeriCorps grant for one or more 3-year grant cycles at the time the regulation takes effect would begin meeting the match requirements at the year three level. So, for example, an organization that is in its fourth year of AmeriCorps funding when the regulation takes effect would remain under the existing requirement in the first year the new rule is in effect. In the second year the new rule is in effect, the grantee would be considered in year 4 on the new matching scale and its overall share would begin to increase in regular increments.

The proposed rule signaled the Corporation's intent to provide training and technical assistance to grantees to assist them in achieving their matching goals. We also committed to consulting with grantees to determine the most useful and appropriate training and technical assistance.

In the proposed rule, we indicated that we believe it is reasonable to expect most grantees to achieve the increased level of matching, and stated our expectation that State commissions continue to manage their portfolios to achieve even higher match levels.

#### Increased Match Requirements

Over 70 commenters addressed the proposed increase in match. Several commenters supported the proposed share increase in principle or as an overall strategy. One commission stated that increasing a program's match requirement each year strengthens the program's connection to the local community and increases the buy-in of program sponsors. Several commenters specifically indicated that their organizations would not have trouble meeting the new match requirements, but they were concerned about the effect of the new rule on other organizations, particularly those in rural and severely economically-distressed areas. One commission indicated that programs in its State would not have a problem meeting the in-kind match requirements, but would have trouble meeting the cash match requirement over time. In response to this last comment, a grantee's cash match requirement may not necessarily increase over time. Once a grantee meets the minimum 15 percent non-Federal cash match for member support costs, the grantee may meet the balance of its

overall share of costs through any combination of operating and member support matching resources, including in-kind donations, provided that the resources meet the criteria of 45 CFR 2541.240 or 45 CFR 2543.23, as applicable.

Most commenters on this issue opposed the proposed match increases. Most of these commenters viewed the increased match as inconsistent with the long-term stated goal of creating “a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership.” Many commenters stated that “in the current philanthropic climate, increasing the match

requirements for AmeriCorps programs will destabilize those programs and force many out of existence.” One commenter viewed the progressive match increases as “steps toward defunding \* \* \* without any consideration for need and the impact of the services provided.” The Corporation, however, continues to believe that an important piece of sustainability is decreasing reliance on Federal funding, and increasing the capacity of organizations operating AmeriCorps programs to assume more of the cost. This will make existing grantees stronger and more tied to their communities, while allowing the Corporation to satisfy Congressional

direction, invest in new programs, and expand the reach of national and community service. The Corporation does agree that there is a point at which match requirements can become destabilizing, but a 50 percent overall share does not reach that point. In addition, Congress has consistently directed the Corporation to “increase significantly the level of matching funds and in-kind contribution provided by the private sector.” The Corporation is, therefore, maintaining the match requirements as drafted in the proposed rule, according to the following table, except for programs in rural or severely economically distressed communities, which we address more fully later:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10 and on
Minimum Overall Share .....	N/A	N/A	N/A	26%	30%	34%	38%	42%	46%	50%

The final rule clarifies that, as is currently the case, a grantee will be held to its matching requirements at grant closeout—usually at the end of each three-year grant cycle. At that time, the grantee must have contributed match in an amount equal to the combined total of each year’s required match amounts. For example, if a grantee begins a recompeting program grant matching at the year 4 level (26 percent) and has a grant in the amount of \$100,000 in the first year, \$110,000 in the second year, and \$115,000 in the third year, the grantee would be responsible at the end of the three-year grant for a total of \$98,100 in match (the sum of 26 percent of \$100,000 in the first year, 30 percent of \$110,000 in the second year, and 34 percent of \$115,000 in the third year.) The Corporation does not necessarily expect the grantee to provide match on a year-by-year basis according to the schedule, as long as the total match at the end of the three-year grant meets the regulatory requirements. If the grantee does not reach the 26 percent threshold of \$100,000, or of actual expenditures, in the first year of the grant (year 4 on the matching scale), but makes up the difference by matching more than the amount required in year 2 or year 3 (year 5 or year 6 on the matching scale) such that the cumulative match across the three years meets the requirement, the grantee will be in compliance and will not be required to repay funds.

Several commenters indicated that the increased match requirements will force program staff to spend more time on the administrative burdens of raising and documenting match, which will directly

impact member attrition, service hours, training and education, and programmatic outcomes. Many programs, however, have demonstrated that they can exceed the expected match levels without adverse results. Our common challenge is to share best practices to achieve both sustainability goals and improve program outcomes. For example, at least eight State commissions already have match requirements that are more stringent than the Corporation’s current requirements.

One commenter questioned how the Corporation plans to use training and technical assistance to help programs that cannot meet the 50 percent match. In response, the Corporation reiterates its intent to target training and technical assistance to assist grantees having difficulty raising match. The Corporation will consult with grantees regarding the issues that training and technical assistance should address, and how best to deliver such training and technical assistance.

**Timetable for Match Increases**

One commenter supported the 3-year “establishment phase” during which the grantee share for new programs remains unchanged and “grandfathering” existing programs into the match schedule at the year 3 level.

A few commenters requested clarification as to what the match requirements would be for current programs that have completed one or more 3-year grant cycles on the date the regulation takes effect and how the “N/A” applies to a program beginning

its match requirements at the year three level. In years 1 through 3 that an organization receives a grant, it is required only to meet the minimum 15 percent member support, and 33 percent operational costs match requirements. There is no overall match for years 1 through 3—hence the “N/A.” In each year from year 4 on, once a grantee has met the minimum 15 percent and 33 percent as described above, it may meet the additional match in whatever combination of additional member support or operational costs match it deems appropriate. Any program that has received 3 or more years of AmeriCorps funding on the date the regulation takes effect will begin matching at the year 3 level (meeting the minimum matches in member support and operating costs). These programs will, therefore, have another 7 years before their overall match requirement reaches the maximum 50 percent match. A new program will be required to meet the 15 percent and 33 percent minimum match requirements for member support and program operating costs during its first three-year grant period, and the required overall match in year 4 and beyond, unless the program receives a waiver. The Corporation has not amended the final rule on this point.

The following table reflects when and how the new match requirements will take effect:

If in the 2005 program year, your program has received AmeriCorps funding for this many years	Then, you will begin matching in the 2005 program year at this year level
0 .....	1
1 .....	2
2 .....	3
3 .....	3
4 or more .....	3

**Impact of Match Requirements on Small, Economically-Distressed, and Rural Communities**

Many commenters raised concerns about the impact of the sustainability requirements on small, economically-distressed, and rural communities. One representative of a commission in a largely rural State was concerned that the increased match requirements would eventually mean that no programs would exist in that commission's State because of the lack of resources. Another State specifically requested that its "unique geography, weather, population, and general remoteness be reflected in the application of the new regulations, either granting [the State] an exception

for sustainability rules or creating a less onerous sliding scale."

While the Corporation continues to believe that most programs can meet the requirements as stated in the proposed rule, the Corporation is concerned about the impact this rule could have on programs operating in rural and economically distressed areas across the country. The Corporation wishes to increase AmeriCorps participation in those areas and is concerned that a "one-size fits all" approach to the match might contravene that goal.

After much deliberation and consideration of the comments on this issue, the Corporation has developed an alternative match schedule that, while still requiring increases over time, does so more gradually up to a 35 percent overall match requirement in the tenth year an organization receives AmeriCorps funding. The Corporation will authorize the alternative match scale for programs that demonstrate they are in rural or severely economically distressed communities, and that they need the lower match requirement. This alternative match schedule will not be available to programs that the Corporation believes are able to meet

the regular match requirements. For example, a program that historically has demonstrated its ability to meet the higher match will continue to be required to do so, even if it is located in a rural or severely economically distressed community. The alternative match requirement will allow programs in rural and severely economically distressed communities to provide match over 10 years at a lower rate than other programs, but still increase their overall match levels over time. The alternative match requirement will be in effect for the duration of the three-year grant period. A program that qualifies for the alternative match requirement will have to reapply to extend the alternative match requirement for any subsequent recomplete application.

The alternative match scale for programs in rural or severely economically distressed communities will incrementally increase beginning in the seventh year the organization receives AmeriCorps funding and reach 35 percent by the tenth year the organization receives AmeriCorps funding. The following table summarizes the alternative match requirements for these programs:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10 and on
Minimum Overall Share .....	N/A	N/A	N/A	N/A	N/A	N/A	29%	31%	33%	35%

The alternative match requirement is designed to address the specific circumstances of programs that must primarily conduct their fundraising in low resource areas. The Corporation believes that this alternative lower match scale for the programs in our neediest communities will allow such

programs to begin, or continue to participate in AmeriCorps and meet those communities' unmet needs.

**Qualifying for Alternative Match Requirement as Rural**

In determining whether a program is rural, the Corporation intends initially to consider the most recent Beale code

rating published by the U.S. Department of Agriculture for the county in which the program is located. Any program located in a county with a Beale code of 6, 7, 8, or 9 will be eligible to apply for the alternative match requirement. The table below provides definitions for each Beale code.

**2003 BEALE CODES**

Code	Metro type	Description
1 .....	Metro .....	Counties in metro areas of 1 million population or more.
2 .....	Metro .....	Counties in metro areas of 250,000 to 1 million population.
3 .....	Metro .....	Counties in metro areas of fewer than 250,000 population.
4 .....	Non-metro .....	Urban population of 20,000 or more, adjacent to a metro area.
5 .....	Non-metro .....	Urban population of 20,000 or more, not adjacent to a metro area.
6 .....	Non-metro .....	Urban population of 2,500 to 19,999, adjacent to a metro area.
7 .....	Non-metro .....	Urban population of 2,500 to 19,999, not adjacent to a metro area.
8 .....	Non-metro .....	Completely rural or less than 2,500 urban population, adjacent to a metro area.
9 .....	Non-metro .....	Completely rural or less than 2,500 urban population, not adjacent to a metro area.

**Qualifying for Alternative Match Requirement as Severely Economically-Distressed**

In determining whether a program is located in a severely economically-distressed county, the Corporation intends initially to consider the following county-level characteristics:

County-level per capita income is less than or equal to 75 percent of the national average for all counties using the most recent census data or Bureau of Economic Analysis data; the county-level poverty rate is equal to or greater than 125 percent of the national average for all counties using the most recent census data; and county-level

unemployment is above the national average for all counties for the previous 12 months using the most recently available Bureau of Labor Statistics data.

The following table provides the website addresses where the publicly-available information referred to above can be found:

Web site address	Explanation
<a href="http://www.econdata.net">www.econdata.net</a> .....	Econdata.Net: This site links to a variety of social and economic data by States, counties and metro areas.
<a href="http://www.bea.doc.gov/bea/regional/rei">www.bea.doc.gov/bea/regional/rei</a> .....	Bureau of Economic Analysis' Regional Economic Information System (REIS): Provides data on per capita income by county for all States except Puerto Rico.
<a href="http://www.census.gov/hhes/www/saipe/index.html">www.census.gov/hhes/www/saipe/index.html</a> .....	Census Bureau's Small Area Poverty Estimates: Provides data on poverty and population estimates by county for all States except Puerto Rico.
<a href="http://www.census.gov/main/www/cen2000.html">www.census.gov/main/www/cen2000.html</a> .....	Census Bureau's American Fact-finder: Provides all 1990 and 2000 census data including estimates on poverty, per capita income and unemployment by counties, States, and metro areas including Puerto Rico.
<a href="http://www.bls.gov/lau/home.htm">www.bls.gov/lau/home.htm</a> .....	Bureau of Labor Statistics' Local Area Unemployment Statistics (LAUS): Provides data on annual and monthly employment and unemployment by counties for all States including Puerto Rico.
<a href="http://www.ers.usda.gov/Data/RuralUrbanContinuumCodes/">http://www.ers.usda.gov/Data/RuralUrbanContinuumCodes/</a> .....	U.S. Department of Agriculture's Rural-Urban Continuum Codes (Beale codes): Provides urban rural code for all counties in U.S.

The location of a program will be determined by the legal applicant's address, except where the Corporation in its sole discretion determines that some other address is more appropriate. If a particular legal applicant believes that its address or the use of county-level data is not the appropriate way to determine the program's location or its funding environment, the applicant may make its case to the Corporation as to why the Corporation should consider the program location differently and the basis for requesting the alternative match requirement. An example might include a program located in a more affluent or urban area but with a majority of its members serving at sites located in rural or severely economically distressed counties and whose fundraising primarily occurs in those counties through matching contributions from the sites. The Corporation will disseminate instructions on how to apply for the alternative match schedule in the AmeriCorps application instructions.

Note that the alternative match schedule for programs in rural and severely economically distressed counties does not replace the Corporation's existing statutory authority to waive match based on a demonstrated lack of resources at the local level (§ 2521.70). The Corporation accepts requests for waivers from any program unable to meet its match requirements if the waiver would be equitable due to lack of available

financial resources at the local level. However, the Corporation provides these waivers only in extreme circumstances, and only when it would be equitable. The burden is on the grantee to demonstrate the unique lack of resources in its community that would support the Corporation's granting a waiver equitably.

**Intermediaries**

The Corporation received several comments from intermediary organizations expressing concern that the 50 percent match requirement would hamper their ability to provide service to communities through a changing portfolio of new and small community organizations, including faith-based. The Corporation believes that the higher match may be difficult for some organizations that regularly bring on new small sites that themselves contribute matching funds to meet matching requirements. Many faith-based and small-community based organizations are only able to participate in AmeriCorps through this type of intermediary organization that has the infrastructure to manage all the Corporation's requirements. The Corporation is concerned that the increase in match requirements to 50 percent over 10 years could create a barrier to those organizations' continued participation in AmeriCorps.

However, in attempting to craft regulatory language that addresses this issue, the Corporation was unable to

adequately define "intermediary organizations" without the rule becoming either over-inclusive, or, alternately, inappropriately inciting organizations to change their business model. Moreover, after close analysis, the Corporation does not believe it necessary to make substantive changes to the regulations to accommodate these types of organizations, as the Corporation may use its statutory waiver authority to accommodate an organization that is having difficulty meeting its match requirements due to lack of resources at the local level.

The Corporation will consider waiving the higher match requirements for this type of intermediary if the intermediary demonstrates (1) that the majority of its members are placed in new organizations or small faith-based and other community organizations, and (2) the intermediary derives its matching funds substantially from the contributions of placement organizations that are unable to generate the higher match amounts.

One commenter suggested that the proposed match requirements would have a disproportionate impact on community organizations, including faith-based organizations, and thus, could violate section 104 of the Temporary Aid for Needy Families legislation (TANF), better known as "charitable choice." The Corporation is committed to equal protection and the expansion of opportunities for involvement by community

organizations, including faith-based organizations, and believes that this final rule includes several refinements that help to achieve those goals. These include (1) the Corporation's plan to review similar program models together in the selection process; (2) special consideration in the selection process for programs operated by, or involving, community organizations, including faith-based organizations; and (3) the ability of members to engage in capacity-building activities. In addition, the Corporation's waiver authority, as discussed above, will enable the Corporation to adjust match requirements under limited circumstances. The Corporation will continue to look for effective ways to include community organizations, including faith-based organizations, in national and community service.

#### Definition of "Grantee" for Purposes of Match Requirements

Several commenters asked that the Corporation clarify to whom the matching requirements apply. The Corporation has added a new section 2521.40 to clarify that matching requirements apply to subgrantees of State commissions and direct program grantees of the Corporation. The Corporation will hold State commissions to an aggregate overall match based on the matching levels of all its subgrantees, which will be adjusted annually to reflect the annual change in each of the commission's subgrantee's share of costs. A State commission will be required to repay funds to the Corporation if, in the aggregate, the commission's subgrantees do not meet their match requirements under these regulations. The Corporation will expect the State commissions to monitor match requirements for their subgrantees and ensure that individual subgrantees are meeting their match requirements. The Corporation will review subgrantee match levels when an organization recompetes for AmeriCorps funding. At that point, the Corporation will consider an applicant's success in meeting both its budgeted match (match as reflected in an applicant's grant application budget) and regulatory match requirements (match as required under these regulations).

Some national direct organizations requested that the match requirements be imposed at the parent organization (for multi-State grantees) level, while others believed that it would be more consistent to apply them at the sub-

grantee or site level. One commenter noted that national directs need the flexibility to match at the grantee level rather than the operating site level, where resources may be more limited. The Corporation believes that the responsible entity for meeting the increased match requirements is the parent organization; however, the parent can choose either to pass down the match requirements or use a portfolio strategy to manage the match requirements across its sites.

Two commenters specifically noted that tracking a program's match requirements based on the applicant organization's Employer Identification Number (EIN) penalizes large organizations that support a number of programs. The Corporation agrees that the EIN is not the appropriate identifier to track program match. For purposes of determining the applicable match schedule, the Corporation will determine tenure based on the particular grant and project, rather than legal applicant. The Corporation is modifying its grants management systems to enable us to track the longevity of each program. Thus, one legal applicant will, theoretically, be able to receive funding for two separate programs, under two separate grants, subject to two different match scales depending upon when each program began to receive funding. Similarly, the local site of a national direct grantee may choose to end its relationship with the national direct and compete on its own for State commission funding. If successful, this would constitute a new program and a new grant, and matching requirements would begin at the year one level for this program.

#### State Flexibility To Meet Match Requirements (§ 2521.65 in the Proposed Rule)

Under § 2521.65 of the proposed rule, if a State commission determined that a particular subgrantee was unable to meet its required matching levels because it operated in a resource-poor community, the State commission could still meet that subgrantee's matching requirements by pairing a high-matching subgrantee in the State commission's portfolio with the low-matching subgrantee to make up the difference. Several commenters supported the proposal to provide the States with flexibility to manage their portfolio of grantees. Two other commenters, however, requested that the Corporation provide flexibility to States to use a State portfolio average for

grantee share, rather than allowing commissions to pair low-matching with high-matching subgrantees, as described in the proposed rule. As discussed above, while a commission's subgrantees will be individually responsible to the State for meeting their required match levels according to the match scale they are on, we will hold State commissions to a State portfolio aggregate overall match, based on all the programs' match requirements in a State's portfolio. This means that a State commission will be required to monitor and enforce match requirements for its individual grantees, but will have the flexibility to accommodate discrepancies in match across its portfolio, without increasing its liability to repay funds. The Corporation will only consider the actual matching history of individual commission subgrantees if and when they apply for AmeriCorps competitive funding.

This revised approach makes the provision in the proposed rule that allowed commissions to pair a low-matching subgrantee with a high-matching one for the purpose of meeting match unnecessary. The Corporation has, therefore, deleted that provision from the final rule.

#### Match Requirements for Organizations With Break in Funding (§ 2521.80)

The proposed and final rule clarify that an organization that has not directly received an AmeriCorps State or National operational grant for five years or more, as determined by the end date of the organization's most recent grant period, may begin matching at the year 1 level upon receiving a new grant from the Corporation. This means that, for example, a site of an existing grantee, or a recipient of a planning grant, that chooses to apply directly to the Corporation for AmeriCorps program funding will be able to apply as a year 1 program, subject to the year 1 match requirements. A program that starts in a State's formula portfolio, on the other hand, and then moves three years later to the competitive pool, will continue meeting match requirements based on where the program was matching the year before. One commenter supported this approach. The final rule includes a new paragraph (b) to § 2521.80 that explains the requirements for former grantees with a break in funding of less than five years.

The following table summarizes the circumstances under which an organization would be deemed to have had a break in funding:

If you previously were a	And then, within 5 years, apply as a	Your status for purposes of match will be
National direct parent, Professional Corps, State competitive, or State formula program.	National direct parent, Professional Corps, State competitive, or State formula program.	Existing grantee (match at the level you would have matched the year following your last grant year).
National direct subgrantee or site, State competitive subgrantee or site, or State formula subgrantee or site.	National direct parent, Professional Corps, State competitive, or State formula program.	New grantee (begin match at year 1).
Any other Corporation grantee .....	National direct parent, Professional Corps, State competitive, or State formula program.	New grantee (begin match at year 1).

Changing Legal Applicants (§ 2521.90)

The proposed rule stated that an organization that is a new or replacement legal applicant for an existing program would be required to provide matching resources at the same level as the previous legal applicant was matching at the time the new organization took over the program. Two commenters objected to this provision, stating that the original legal applicant may have many established sources for match that are not available to the new legal applicant, and the latter therefore might not be able to pick up where the first legal applicant left off. Another commenter asked the Corporation to define an existing program under this proposed provision.

By existing program, the Corporation means a set of project activities meeting specific unmet needs of a community previously funded by the Corporation. Over the years, several programs have had a change in legal applicants either in the middle of a grant cycle, or at the end of a grant cycle. The Corporation, therefore, saw a need to include a provision to address this circumstance. To the extent that a new grantee is unable to meet the match at the level of the predecessor legal applicant, the grantee may request a waiver of the match requirements due to lack of resources at the local level.

Limitations on the Use of Federal Funds

The comments revealed some confusion over grantees using other Federal funds to meet the increased match requirements. As reflected above, the Federal share of member support costs, excluding health care, may not exceed 85 percent. There is no statutory prohibition or limit in the NCSA on an organization using other Federal funds, to the extent otherwise permitted, to cover its share of operating (*i.e.* costs other than member support) or health care costs. As a matter of compliance, grantees may use Federal funds for their non-member support related match, as long as the other Federal agency permits its funds to be used as match for Corporation funds. However, as a matter of program performance, more non-Federal funds are better, because

Congress' mandate to the Corporation is to "increase significantly the level of matching funds and in-kind contributions provided by the private sector." Consequently, an organization's reliance on Federal funds could have an impact in the selection process, where we will consider the diversity of non-Corporation funding, including non-Federal funding, and the extent to which grantees are increasing private sector contributions.

Several commenters objected to the proposed blanket prohibition on a grantee's using other Federal funds for the grantee's share of member support costs. While the proposed rule appeared to set a maximum Federal share of 85 percent for all member benefits, that was not the Corporation's intent. The Corporation has amended the language in § 2522.250(b)(3), relating to health care benefits, to reflect, consistent with the NCSA, that health care benefits are subject to a maximum Corporation share of 85 percent, rather than a maximum Federal share.

The final rule also includes a technical amendment in § 2521.45(a)(2) relating to professional corps programs. In the proposed rule, the Corporation reiterated, in clearer language, the current regulatory language, by stating that professional corps programs could not use any Corporation *or other Federal funds* for any part of the member living allowance. In practice, the Corporation has never prohibited professional corps programs from using non-Corporation Federal funds towards the living allowance, and does not believe that such an extreme limitation is appropriate or warranted by statute. The Corporation is, therefore, amending the final rule to reflect that professional corps programs are prohibited only from using Corporation funds for the living allowance, thereby bringing the regulation in line with Corporation policy and practice.

Match Requirements for Indian Tribes

Indian Tribes must, as a general matter, meet the regular match requirements applicable to all Corporation grantees. Most of the Corporation's current tribal grantees,

however, are located in rural or severely economically depressed areas of the country. Consequently, they will likely be eligible to waive into the alternative match requirement, assuming they have not demonstrated the ability to meet higher match requirements in the past. To the extent that a tribal grantee is not able to meet even the alternative match requirement, the Corporation will, as always, consider using its statutory waiver due to lack of resources at the local level. In compliance with Executive Order 13175, the Corporation will handle any waiver request from an Indian Tribe in an expedited manner.

Match Requirements for U.S. Territories

Section 1469a of title 48, United States Code, requires departments and agencies to waive "any requirement for local matching funds under \$200,000 (including in-kind contributions) required by law" for Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Consequently, the Corporation waives the AmeriCorps matching requirements for those U.S. Territory governments. Non-profits and other organizations located in the territories that apply directly to the Corporation are not eligible for this title 48 waiver, and will be required to meet the match requirements applicable to all regular AmeriCorps programs, absent some other Corporation waiver.

Other Assistance for Low-Matching Programs

In the proposed rule, the Corporation identified several strategies of targeted assistance for otherwise well-performing and compliant programs who are demonstrably at risk of not meeting the new matching requirements. The Corporation remains committed to assisting grantees in the following ways: (1) By looking for opportunities to align our resources, including training and technical assistance and other program resources such as VISTA members, if appropriate, to help grantees identify new strategies to raise matching resources and community support and to help broaden and build the capacity of community organizations; (2) by



looking for opportunities to help raise resources; (3) by providing State commissions the flexibility to meet their overall match requirements in the aggregate across their portfolio of programs; and, (4) through limited use of the Corporation's statutory authority to waive match requirements for those satisfactorily performing and otherwise compliant programs that demonstrate an inability, in spite of reasonable efforts, to achieve sufficient financial support to meet the increased matching requirements.

The Corporation believes that incrementally increasing match requirements and providing an alternative match requirement for programs in rural and severely economically distressed communities, together with the measures described above that are designed to assist grantees in meeting the new requirements, satisfy Congressional direction and represent a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability, such that additional requirements in annual appropriations bills, or through rulemaking, are not necessary. We intend to monitor and report to the public on a regular basis the progress grantees are making in leveraging Federal resources.

#### *D. Codifying the Cap on Child-Care Payments and Corporation Share of Health Benefits (§ 2522.250)*

##### Child Care

Section 140(e) of the Act authorizes the Corporation to establish guidelines on the availability and amount of child-care assistance. By current regulation, child-care payments for eligible AmeriCorps State and National members are "based on" amounts authorized under the Child Care and Development Block Grant Act of 1990. These payments are made directly to the child care provider on behalf of a full-time member eligible for childcare assistance. To be eligible, a full-time participant must be the parent or legal guardian of a child under 13 who resides with the participant, must have a family income less than 75 percent of the State's median income, must not currently be receiving child care assistance from another source (including another family member), and must certify that such assistance is necessary in order to participate in AmeriCorps. To be eligible to receive a payment, a child care provider must be eligible to receive payments under the Child Care and Development Block Grant Act of 1990. In the proposed rule, the Corporation made one change to

existing regulation by explicitly capping the amount of child-care benefits for any individual AmeriCorps member at the level established by each State under the Child Care and Development Block Grant.

One commenter opposed the proposed change on the grounds that it could lead to a reduction in the amount of assistance available to an AmeriCorps member in a State that requires counties to match Federal Child Care and Development Block Grant funds. Several commenters expressed concern that the proposed rule did not provide direction to a State that is issued a waiver under the CCDBG program. Several commenters expressed concern that the proposed rule was not clear on what formula would be used to determine child care assistance. Two commenters commended the proposed rule for providing clarity and direction to State childcare agencies and providers. Another commenter recommended that current levels for child care be maintained in order to preserve equal access and opportunity to AmeriCorps.

The final rule ensures that child care assistance on behalf of eligible AmeriCorps members does not exceed applicable payment rates to an eligible child care provider established by each State under the Child Care and Development Block Grant Act. Under that Act, each State must certify that payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to families that do not receive subsidies. To demonstrate that its plan achieves equal access, a State must consider the results of a local market survey conducted at least every two years. The CCDBG Act affords States latitude in setting payment rates—rather than a formal waiver mechanism—provided that a State demonstrates that it has considered key elements of equal access, outlined in the U.S. Department of Health and Human Services regulations published at 45 CFR 98.16 and 98.43. The fact that a particular State might require counties to contribute a portion of the payment does not affect the amount of the payment to an eligible provider, which is based on the local market survey. An AmeriCorps member is eligible for the same payment established by the State under the CCDBG Act to an eligible child care provider in the applicable locality, regardless of whether a county contributes to that payment. The Corporation seeks only to ensure that any child care assistance to an eligible AmeriCorps member not exceed the applicable payment rate to an eligible provider under the CCDBG Act.

Therefore, the only change we have made in the final rule is to clarify that the payment rate in question is "to an eligible provider." However, we intend to solicit suggestions about how, given the relatively limited Federal funds available, we should structure the provision of child care assistance to full-time AmeriCorps members, and may amend these regulations in the future.

##### Health Care Benefits

In § 2522.250(b)(3) of the proposed rule, the Corporation mistakenly referred to a maximum *Federal* share for health care benefits, rather than the maximum *Corporation* share of 85 percent, as provided in statute. Several commenters noted the discrepancy. The Corporation has amended the above-referenced section, and added a new § 2521.45(a)(4) to now refer to the maximum Corporation share.

One commenter read the proposed rule as mandating health care benefits for all members. The Corporation did not, in fact, change any of the rules relating to health care benefits for AmeriCorps members. Programs must, as always, provide each full-time member with health benefits if the member does not otherwise have coverage.

#### *E. AmeriCorps Grants Selection Process and Criteria (§§ 2522.400 Through 2522.475)*

In addition to establishing specific AmeriCorps grant application requirements, section 130 of the Act, gives the Corporation broad authority to set additional application requirements and to establish the selection process. We are adjusting our grant selection criteria to meet three objectives: (1) To better align the selection criteria with elements that predict program success; (2) To incorporate into the selection criteria greater emphasis on all elements of sustainability; and (3) To provide transparency, predictability, and consistency for organizations applying for AmeriCorps funds.

The proposed rule described the Corporation's processes and criteria for selecting grantees. In selecting AmeriCorps programs, the Corporation generally needs to know four things: (1) An organization's plan and its expected outcomes; (2) Whether the organization can manage Federal funds, and operate and support the proposed program effectively; (3) The budget adequacy and cost-effectiveness of the proposed program; and (4) For an existing program, whether the organization has implemented a sound program, including achieving strong outputs and outcomes, demonstrating organizational

capability and cost-effectiveness, and complying with other Corporation requirements.

To address these issues, the proposed rule modified the current structure of three overall categories of criteria—Program Design, Organizational Capability (formerly Organizational Capacity), and Cost-Effectiveness (formerly Budget/Cost-Effectiveness). We adjusted the weights of the three categories to better balance program design against organizational strength, which is reflected through organizational capability and cost-effectiveness. Consequently,

- Program Design was worth 50 percent of the score (as opposed to 60 percent currently),
- Organizational Capability remained at its current 25 percent weight, and
- Cost-Effectiveness increased to 25 percent (as opposed to 15 percent currently).

Under these regulations, the Corporation's focus within Program Design is now on the relationship between an applicant's rationale and approach, on the one hand, and the outputs and outcomes to be achieved for members and the community, on the other. Most of the criteria from the Corporation's current AmeriCorps 2005 guidelines remain part of the revised selection criteria, although they may now appear under a different category. (Please visit our website at [www.nationalservice.gov/funding\\_initiatives](http://www.nationalservice.gov/funding_initiatives) to view the AmeriCorps 2005 guidelines). We also added criteria across all three categories to better reflect our focus on outcomes and sustainability and our desire to maintain a portfolio that serves a broad range of people through diverse program models.

#### General Comments About Selection Criteria and Process

Two commenters supported the Corporation's effort to clarify the grant selection criteria. One of these commenters expressed the hope that this process and the criteria would foster stronger cooperation between States and the Corporation. Several commenters, however, felt that the proposed rule did not achieve the NPRM's stated goals of providing transparency, predictability, and consistency. Three commenters recommended maintaining the grant selection criteria currently in use.

The Corporation strongly believes that, in setting out the selection process and criteria in regulation, and tightening the selection criteria themselves, the Corporation has greatly increased the transparency, predictability and

consistency of the selection process. Furthermore, the Corporation has endeavored to clarify, step by step, how the selection process works.

One commenter noted that the proposed rule fails to distinguish between new and recompeting applicants regarding which elements would apply only to recompeting organizations. The Corporation has amended the language to indicate, where relevant, that a particular provision applies only to applicants that have previously received AmeriCorps funding.

Some commenters read the proposed rule as removing State and local control over which programs receive funding in the State. The Corporation disagrees with this interpretation. First, States, as always, have broad discretion over which programs to fund through their formula allocation. Second, States continue to have the discretion to decide which proposals to forward to the Corporation for competitive funding. The selection criteria, as proposed, do not represent a substantial deviation from the selection criteria the Corporation has used up until now—they are more focused, clearer, more specific, and incorporate more elements relating to performance and sustainability.

Two commenters recommended that the selection criteria explicitly include program enrollment and retention rates. The Corporation agrees that a program's history of member enrollment and retention rates should be a factor in the selection process. The final rule includes a new subsection 2522.425(b)(2) to reflect this. The Corporation does not, however, believe it necessary to include a specific selection criterion on the timeliness of reporting, particularly since the Corporation may consider a grantee's reporting on prior grants under § 2522.470(b)(1), in the context of clarifying and verifying information in a grant application. We expect all Corporation grantees to comply with all program requirements, including timely reporting. While the Corporation has an interest in improving grantee timeliness with reporting requirements, we do not believe it is appropriate to measure as basic an expectation as meeting deadlines in the competitive process.

One commenter suggested that the Corporation hold a separate grant competition for stand-alone AmeriCorps programs whose sole mission is national service. This commenter viewed such stand-alone programs as having unique costs and benefits that the Corporation may not be able to consider in the context of a broader competition. The

Corporation does not believe that a separate grants competition is necessary for these types of programs as we are prepared, in the grant selection process, to consider the unique circumstances of programs.

#### Overall Criteria Weight (§ 2522.440)

One commenter supported the increased weight on cost-effectiveness. Four commenters, on the other hand, specifically recommended keeping the weight of program design at 60 percent. One recommended decreasing the weight of organizational capability to 15 percent in order to keep program design at 60 percent. One commenter felt that 25 percent for program infrastructure (presumably organizational capability) was too high, because if a program is performing well and cost-effective, one may presume sound program infrastructure. The Corporation notes, in response, that we did not propose to change the current weight of organizational capability. Both the proposed rule and the final rule maintain the weight of organizational capability at its current 25 percent.

Several commenters recommended that program quality should be more important than cost-effectiveness, and others urged that program design and performance measurement be given more weight. Many commenters opposed increasing the weight of the cost-effectiveness category. One of these commenters believed that AmeriCorps programs are already cost-effective.

Four commenters suggested that the emphasis on cost-effectiveness will lead to lower quality programs. Several commenters expressed concern that it will discourage innovative program design, particularly those reaching hard to serve areas or populations, or distressed rural, poor communities with lack of private and local government resources. As stated throughout this document, the Corporation is very deliberately trying to ensure that the selection criteria, particularly those relating to cost-effectiveness, take into consideration the inherent costs and unique circumstances of each program. The Corporation, therefore, does not anticipate that the shift in emphasis of the selection criteria will lead to the results the commenters above are expecting. The Corporation will, however, monitor the impact of the proposed rule and will publicly share its findings.

#### Program Design (§ 2522.425)

One commenter stated that fostering civic responsibility should not be a criterion for selection. The Corporation disagrees. The Corporation believes that

AmeriCorps programs should plan for this in a systematic way, and that it is a relevant measure of sustainability. This criterion remains in the final rule.

One commenter recommended including in the final rule language that would ask intermediaries to identify the process by which they will select issue areas and partners, rather than require them to define services and partners for the coming year. Applicants can do this already under the proposed selection criteria. An organization that typically selects its placement sites and specific service activities following approval of the grant will be able, within the selection criteria as currently drafted, to identify how it will select its placement sites and emphasize the types of service activities the program typically supports. The Corporation will continue, however, to require all applicants to include their proposed operating sites and, at least, a general description of member activities in the application for funding.

One commenter recommended that if a program scores poorly in the rationale and approach category, it should receive no further consideration. The Corporation anticipates that any applicant that scores poorly in the rationale and approach category will be unable to adequately respond to the other selection criteria and, therefore, will ultimately score poorly overall. In our view, it is significantly easier to articulate the need for the program than to describe and secure all the elements necessary for program success. For that reason, we do not believe that the rationale and approach subcategory of program design needs more weight or emphasis than it had in the proposed rule.

One commenter recommended that the Corporation clarify its commitment to racial, ethnic, and socioeconomic diversity. Two commenters urged the Corporation to reward programs that successfully recruit a diverse group of participants in terms of racial, ethnic, socioeconomic, geographic and educational backgrounds in the grant selection process. In fact, the Corporation's selection criteria under program design specifically reward applicants who can show they have plans to recruit a diverse corps of members. Another commenter suggested the Corporation intensify efforts to identify and support programs that seek to enroll youth who are low-income or out-of-school. The Corporation's on-line application allows applicants to self-identify their program model from a list that includes youth corps. Our ability to more clearly identify program models, and our plan to review, to the extent

possible, similar models together, will allow us to ensure that our portfolio of programs is rich and diverse. In addition, three of the Corporation's priorities, as listed in § 2522.450, specifically include this population.

One commenter interpreted the language in § 2522.425(c)(3) as expecting programs to replace member activities with volunteers. The language refers to assessing the extent to which a program "generates and supports volunteers to expand the reach of your program in the community." This section was not intended to result in volunteers replacing member activities—the goal of this provision was to assess the impact and reach of a program's volunteer generation and support activities in the community.

#### Organizational Capability (§ 2522.430)

In § 2522.430(c) of the proposed rule, the Corporation stated that in reviewing a proposal submitted by a State commission for competitive funding, the Corporation may deny funding to a program applicant if the Corporation determines that the State commission's financial management and monitoring capabilities are "materially weak." Several commenters expressed concern that the process for determining a State commission to be "materially weak" is not clear. One commenter recommended that the status of a commission be based on set criteria and clarified prior to the opening of the grant process, and others opined that applicants should not be penalized if their State commission is weak.

The Corporation's intent in including this factor in the selection criteria was to ensure that, in approving a State's portfolio of programs, the Corporation is able to match the commission's capacity with the needs of the programs we are approving. While the Corporation does assess commission capacity through the administrative standards process, the Corporation does not, in fact, have a mechanism by which it determines a State commission to be "materially weak," and therefore has decided not to use the term in this context. For these reasons, the Corporation has removed paragraph (c) from § 2522.430 in the final rule.

The Corporation will, however, assess a commission's capacity to manage and monitor grants as it prepares to approve the commission's grants package, and may determine that a commission does not have sufficient capacity to manage a particular grant, or manage more than a certain number of grants. The Corporation has added a new paragraph (c) to section 2522.470 that addresses this issue.

Section 2522.430(a)(3) of the proposed rule included as a criterion the extent to which an applicant is securing community support that is "stronger" and more diverse. One commenter found the use of the term "stronger" unclear, and recommended that the final rule replace that language with "recurs, expands in scope, or increases in amount." The Corporation agrees that the suggested language is more precise and has amended the final rule accordingly.

#### Cost Effectiveness and Corporation Cost per MSY (§ 2522.435)

In the proposed rule, the Corporation changed the name of the former Budget/Cost Effectiveness category to "Cost-Effectiveness" and increased the overall weight of the category from 15 percent to 25 percent. Within this category, the Corporation focused on the adequacy of the applicant's budget to support the planned program design, and whether the program is cost-effective, as measured through one or more of several indicators of cost-effectiveness, including a program's Corporation cost per MSY.

The Corporation received a significant number of comments on the proposed cost-effectiveness category. Several comments focused on defining the cost-effectiveness of a program based on program quality and results. Other commenters recommended determining cost-effectiveness by comparing similar program models for their value as an investment based on mission, quality, location, and results, as well as cost.

One commenter expressed concern that the Corporation would decide not to fund an otherwise high-quality program for falling just short of its required matching level. The Corporation's goal is to fund high-quality programs. The principal mechanism to enforce match requirements is through the grants closeout process, which could require a grantee to repay funds if the grantee has not met required match levels. The inability to meet match does not necessarily bar a program from successfully reapplying, because the selection process allows the Corporation to take into account specific circumstances, strengths, contributions, and challenges of individual programs in deciding who should receive funding. Clearly, a program's record of match is a factor the Corporation will consider, but it is just one of many factors, and each applicant will have the opportunity in the selection process to explain its record in meeting its required match.

Many commenters did not support increasing the weight of the cost-effectiveness category. Some commenters suggested that the emphasis on cost-effectiveness would lead to lower quality programs. One commenter suggested renaming the category as "Budget, Cost, and Grantee Share," maintaining the total score of the cost-effectiveness category at 15 percent (rather than 25 percent as proposed), and, within that 15 percent, assigning 5 percent for Corporation cost per MSY, 5 percent for budget grantee share, and 5 percent for adequacy of budget to support program design. Another commenter suggested weighting the budget adequacy with 50 percent of the points in that category, and Corporation cost per MSY with the other 50 percent. Another suggested that cost-effectiveness be further divided to reflect 60 percent for budget adequacy and 40 percent for Corporation cost per MSY.

With respect to renaming the category as proposed above, grantee share and Corporation cost per MSY are two of several indicators of cost-effectiveness. It would not, therefore, make sense to limit the category to these two indicators. The Corporation agrees, however, that removing the term "budget" from the name of this category may have led people to believe that cost-effectiveness was the only aspect the Corporation considered important. In fact, the Corporation believes that budget adequacy is an important factor in the selection process. Accordingly, the Corporation is reinserting the words "budget adequacy" into the title of this category of criteria in §§ 2522.420 through 2522.448.

As to the commenter's proposal to maintain the overall scoring of the cost-effectiveness and budget adequacy category back at 15 percent, the Corporation believes that doing so would be counter to its efforts to increase the importance of budget adequacy and cost-effectiveness in the grant selection process. The Corporation views cost-effectiveness and budget adequacy as at least as important as organizational capability, which is also 25 percent, and believes that the appropriate balance is 50 percent for program design, and 50 percent for organizational capability and cost-effectiveness and budget adequacy combined. Consequently, the Corporation is maintaining the cost-effectiveness and budget adequacy category at 25 percent in the final rule.

With respect to weighting the factors within cost-effectiveness and budget adequacy, the Corporation does see merit in clarifying how it will weigh the

two separate criteria of cost-effectiveness and budget adequacy. Consequently, the final rule, in new § 2522.448, indicates that the criterion relating to program cost-effectiveness will be worth 15 points out of the 25, with the remaining 10 points for the adequacy of the budget to support the program design. The 15 points for program cost-effectiveness incorporate several different elements: The program's proposed Corporation cost per MSY, and other cost-effectiveness indicators, such as the extent to which the program demonstrates diverse non-Federal resources; the program's matching levels; and, for a re-competing program, the program's ability to expand outcomes without a commensurate increase in Corporation assistance. An applicant can receive high points for cost-effectiveness by proposing a competitive cost per MSY and by showing its strength in any one (or more) of the other cost-effectiveness criteria. We did not, however, include sub-scores for these individual elements, but only for cost-effectiveness as a whole.

Several commenters read the proposed rule as emphasizing cost over quality in the grant selection process. Two commenters recommended conducting a blind review of program design and organizational capacity prior to evaluating programs on the basis of cost-effectiveness in order to ensure that the Corporation funds programs with good models, rather than programs that are simply cheap. The Corporation notes that the cost-effectiveness portion of the new cost-effectiveness and budget adequacy category is worth only 15 of the 100 total possible points. While the Corporation is placing more weight on cost-effectiveness than in the past, this emphasis is consistent with Congressional direction and our efforts to promote program sustainability. That being said, the quality of a proposal is still important, and a poor quality program is unlikely to receive funding, even if it is low-cost.

Because cost-effectiveness is only worth 15 percent of the total score and the criteria allow the Corporation to take into account individual contributions and circumstances of programs, the Corporation sees no reason to review program design and organizational capacity separately—the most cost-effective program will not receive funding if the program model is not sound and the organization does not have the capability to operate it.

Two commenters requested clarification on how the 25 percent for cost-effectiveness and budget adequacy would apply to Education Award

Programs. As discussed earlier, Corporation cost per MSY and increase in match indicators are not relevant in the context of assessing the cost-effectiveness of an EAP program. The Corporation does believe, however, that both the adequacy of the budget to support the program, and other indicators of cost-effectiveness can and should apply to EAP programs. Consequently, the cost-effectiveness and budget adequacy category will remain at 25 percent for EAP programs, just like for other programs. The Corporation has, however, amended § 2522.435 by adding a new paragraph (c) that explicitly identifies the cost-effectiveness indicators that do not apply to EAP programs.

#### Corporation Cost per MSY in the Selection Process

The proposed rule included, for the first time, Corporation cost per MSY as an indicator of cost-effectiveness. A few commenters noted that Corporation cost per MSY should be considered, but should not be the primary consideration. Many commenters read the proposed rule as making Corporation cost per MSY the paramount or "tie-breaker" criterion in the new selection criteria. This was not the Corporation's intent. The Corporation's goal in emphasizing its inclusion of Corporation cost per MSY in the criteria as one measure or indicator of cost-effectiveness was to give programs an incentive to lower their Corporation cost per MSY as one of many elements to be more competitive. The Corporation continues to view the cost per MSY as a key indicator of cost-effectiveness. Nonetheless, a program that has a higher Corporation cost per MSY that is justified in its application and that demonstrates cost efficiency in other ways under the cost-effectiveness criteria, could still score enough points in the cost-effectiveness category to be eligible for funding.

Five commenters found the proposed rule to be unrealistic in that it appears to value expanding program size and impact while, at the same time, decreasing funding. Several commenters recommended removing program growth and expansion from the selection criteria, given the emphasis on decreasing the Federal share of funding. The Corporation does not agree with this recommendation, as a program can show cost-effectiveness either by decreasing the Corporation share of costs or by growing in size without a commensurate growth in budget.

One commenter did not intrinsically have a concern with the increase in

emphasis in Corporation cost per MSY, but considered the determination of cost-effectiveness as subjective, and therefore suggested that each program be evaluated individually. While the Corporation will review programs together on panels of like programs, we do not score programs against each other, but rather each program individually against the selection criteria.

One commenter requested clarification of the terms “deeper impact” and “broader reach” as used in § 2522.435(a)(2)(iii) of the proposed rule (§ 2522.435(a)(1)(ii)(C) in the final rule). By “deeper impact,” the Corporation is looking for more pronounced outcomes that show the program is having a more beneficial impact on a static number of beneficiaries. By “broader reach,” the Corporation means outcomes that affect more beneficiaries in the community or affect a larger portion of the community with a static level of impact.

#### Individual Program Circumstances

Several commenters viewed the proposed rules as favoring low-cost programs over a program’s quality and results. Some commenters were concerned that the criteria favor part-time programs over full-time programs. Other commenters viewed the selection criteria as favoring urban areas with more access to resources than rural areas. And yet another commenter was concerned that the rule did not adequately recognize or address the fact that different program models require different levels of Federal investment. Two commenters were concerned that the emphasis on cost-effectiveness will discourage innovative program designs, particularly those reaching hard-to-serve populations. Another commenter stated that the rule would threaten programs with at-risk members, because they require more resources than programs with college-educated members.

Sections 2522.430(b) and 2522.435(b) of the proposed rule indicated that, in assessing an organization’s capability and the cost-effectiveness and budget adequacy of the proposed program, the Corporation would consider a variety of individual program circumstances that might put an applicant’s proposal into context. The goal was to give the Corporation the opportunity to fully weigh the contributions and benefits, as well as the challenges that individual programs and organizations might face in competing under these criteria.

While the language in sections 2522.430(b) and 2522.435(b) remains unchanged, the Corporation reiterates here its commitment to considering cost-effectiveness in the context of all

that the applicant proposes—including its level of innovation, its focus on areas with higher need, its program model, its contributions, and its challenges. The Corporation does not believe that there can be a “one cost fits all” approach in the AmeriCorps program; on the contrary, the Corporation recognizes the breadth and diversity of programs, service, community beneficiaries, and individual circumstances, and is committed to considering all of these when selecting programs. The Corporation will not replace high-quality and high-impact programs with low-cost programs that cannot meet the unmet needs in our communities.

#### Waiver Process and Impact on Selection

The proposed rule included two possible bases for waivers—one relating to the requirement to recruit or support volunteers; the other relating to match requirements. Several commenters expressed concern as to when applicants would apply for and receive waivers, and the impact those waivers would have on the selection process. Three commenters suggested that the Corporation address waiver requests before the applicant submits the full grant application, and three others asked how the waiver request would impact the selection process. Several commenters specifically recommended that waivers not affect grant scoring.

As discussed earlier in section VI(B) of this preamble, the Corporation intends to consider waivers of the requirement that programs recruit or support volunteers after the proposal has been reviewed, but prior to awarding the grant. Volunteer recruitment will also remain a competitive criterion in the grant selection process, regardless of the outcome on the waiver request.

An applicant requesting an alternative match requirement or a waiver of match due to lack of resources at the local level, must request a waiver before submitting its application for funding. This will enable applicants to include an appropriate budget with their grant application. Applicants applying through a State commission will be required to request waivers from the Corporation through the commission. The Corporation will address the process for obtaining a waiver in the applicable grant application instructions.

#### Considering Similar Program Models Together

In applying the selection criteria, the Corporation will ensure, to the maximum extent possible, that similar program models are evaluated together.

This will help promote equity and fairness. One commenter strongly supported this approach. A different commenter requested a definition of “similar program models.” Another commenter asked the Corporation to clarify how it will consider programs together. As a general matter, the Corporation defines its different program models according to the list of statutory program models included in § 122(a) of the NCSA. When an organization applies to the Corporation, it must self-identify which program model best describes its proposal. To the extent practicable, the Corporation then groups programs together on review panels, first by program model, such as youth corps or professional corps, and then, if possible, by other factors such as program design (e.g., statewide initiative or intermediary), member model (e.g., individual placement or team-based), issue area (e.g., environment or tutoring) and geographic area to be served (e.g., urban or rural). The more applications the Corporation receives in a particular competition, the more focused each review panel can be. For example, in the 2004 competition, the review panels the Corporation used included a panel reviewing proposals from campus-based professional corps, one reviewing community corps statewide initiatives, and two panels looking at community corps team-based programs focused on independent living. In addition to looking at like-programs together, this process allows us to ensure that we fund a broad and diverse portfolio of programs.

#### Information Outside the Application (§ 2522.470)

The proposed rule described in detail relevant information outside of the grant application that the Corporation may consider in making grant decisions. A few commenters asked how the Corporation would consider each document in the selection process. Two commenters argued that considering supplemental documents would create an uneven playing field and could “appear to be an advantage to a more sophisticated sponsor, or, again, to discourage new small community-based organizations.” One of these commenters recommended that, if the Corporation does consider additional documents, the Corporation should only use documents provided by the applicant and should clearly identify how the document will be scored. One commenter asked the Corporation whether the documents on this list will be used to supplement information in an application, or just to verify

information. Another commenter recommended that the Corporation clarify what information it will consider and the weight it will give to the information.

The Corporation will not supplement an applicant's proposal with information that is not included in the proposal except to clarify or verify information as described below—to do otherwise could create an unlevel playing field and would be contrary to the Corporation's practice that an applicant may not submit supplemental material after the application deadline. Nor will the Corporation score any additional information it may consider. The primary purpose for obtaining information outside the application is to clarify information that is included in the applicant's proposal and to verify assertions made in an applicant organization's proposal, including engaging in due diligence to ensure that the applicant organization can appropriately manage Federal funds. The Corporation will not lower an applicant's score, for example, based on the quality of its Web site—however, the information on the Web site may, in certain circumstances, clarify an organization's structure, shed light on an organization's history, or provide other information that validates data in the application. To clarify the Corporation's intent with respect to considering information outside of the grant application, the final rule includes specific language in § 2522.470(b) stating that the Corporation may consider this information only to clarify or verify information in an application, including engaging in due diligence.

In addition, the Corporation has pared down the list of information sources from 21 items to 11. Several of the individual items listed in the proposed rule have been subsumed into single broader categories. The Corporation removed the financial management survey from the list because the Corporation does not use the survey to make grant decisions. Rather, the Corporation uses it to assess the training and technical assistance that approved applicants may need to establish appropriate systems for managing Federal funds.

One of the information sources in the proposed rule was reports from the Corporation's Office of Inspector General (OIG). One commenter suggested that the Corporation only consider final OIG reports because issues raised in draft reports often are resolved before the IG issues its final report. The Corporation does not believe it should be precluded from considering any information the OIG might make

available to the Corporation regarding prospective grantees, particularly information that might impact a prospective grantee's ability to manage Federal funds or operate an AmeriCorps program. Reports, whether draft or final, contain information that the Corporation may properly consider even before a final report is issued. However, we recognize that a final report might have more reliable information than a draft report, and we intend to give appropriate consideration based on the specific circumstances surrounding the report. The Corporation has amended the language in § 2522.470(b)(4) (2522.470(b)(6) in the proposed rule) to clarify that the Corporation may consider any internal agency information, including information from the OIG.

One commenter suggested that the Corporation replace the list of outside information with language that states that "the Corporation conducts due diligence on prospective applicants," including examining "financial and programmatic information as well as [an applicant's] previous experience operating Corporation programs as applicable." As discussed above, the Corporation has added language to the final rule that speaks to the Corporation using the information described as a part of conducting due diligence on applicants, but the Corporation believes that including a list provides more clarity and specificity than simply stating the Corporation will undertake due diligence activities.

If the Corporation denies an application for funding based on outside information that is at variance with information in the application, the Corporation will inform the applicant, through the Corporation's feedback process, of the specific information the Corporation considered.

#### Applicants Eligible for Special Consideration (§ 2522.450)

In the NPRM, the Corporation indicated that, after we apply the basic selection criteria, we may apply one or more of the Corporation's selection priorities. The NPRM also indicated that the Corporation may announce additional priorities in the Notice of Funding Availability (NOFA), or other notice to the public. Our intent, however, in codifying the selection priorities in these regulations was to provide transparency and baseline consistency for current and prospective grantees. The list of selection priorities in the proposed rule reflects several long-standing priorities as well as a smaller number of new priorities that we believe are appropriate.

Three commenters asked the Corporation to clearly identify how it will apply selection priorities or provide "special consideration" to programs under § 2522.450. One commenter was concerned that many programs address more than one program activity and recommended that the final rule reflect that. The Corporation's goal in giving special consideration to certain program models or activities is to ensure that our portfolio of programs includes, to the extent possible, a meaningful representation of programs addressing those priorities. In each competition, the number of proposals that receive special consideration will vary depending upon how many high-quality applications the Corporation receives that address the enumerated priorities. The Corporation has amended the language in the final rule to clarify that the Corporation may give special consideration to ensure that its portfolio of programs includes a meaningful representation of programs that address one or more of the enumerated priorities.

One commenter supported adding homeland security to the list of national priorities, as long as homeland security-related activities were not required for all programs. As stated above, the Corporation will ensure that its portfolio of programs includes a meaningful representation of programs that address homeland security, but is not requiring all programs to engage in homeland security activities, or any of the other activities included on the list for special consideration.

One commenter supported the inclusion of lower-cost professional corps programs (§ 2522.450(a)(2)) on the list for special consideration because it will encourage the development of more high-quality professional corps programs. Another person commented that States find it difficult to develop programs from community organizations, including faith-based organizations, because of the complicated application process and the lack of State resources to coach applicants through the process. Consequently, this commenter found the priority for such programs somewhat meaningless. The Corporation acknowledges that many community organizations may find the AmeriCorps structure and process challenging. Nonetheless, the Corporation hopes that special consideration for this group of applicants will encourage more such programs to accept this challenge and apply for funding. In addition, the special consideration for community organizations, including faith-based organizations, (§ 2522.450(a)(1))

includes both programs operated by these types of organizations, and programs that do not have these characteristics themselves, but that support the efforts of community organizations, including faith-based organizations, to solve local problems. This means that an intermediary, for example, that includes significant service or placements with community organizations, including faith-based organizations, would fall within this category of programs eligible for special consideration. The Corporation hopes that larger grantees will bring on as sites or sub-grantees other community organizations, including faith-based organizations, that are unable themselves to apply directly for funds.

One commenter noted that the proposed rule created a preference for faith-based organizations over secular organizations by providing special consideration to "an organization of any size that is faith-based" but limiting the analogous special consideration to only "small community-based organizations." To avoid this, the Corporation has amended § 2522.450(a)(1) to remove the reference to "small." The Corporation has also amended the language in this section of the final rule to refer to "community organizations, including faith-based organizations," rather than "faith-based and community-based organizations," as was used in the proposed rule.

One commenter opined that any religion-based criterion or preference in the grant selection process is unconstitutional and therefore should be eliminated from the final rule. Another commenter opposed faith-based organizations receiving a preference over secular programs because secular programs are more likely to be subject to non-discrimination laws. In including a priority for community organizations, including faith-based organizations, the Corporation is not carving out funding exclusively for faith-based organizations. Providing special consideration for community organizations, including faith-based organizations, is not including any religion-based criterion in the selection process—it is merely a way to ensure that the Corporation's portfolio includes a meaningful representation of programs operated by or reaching community organizations, including faith-based organizations. The Corporation has acknowledged that many community organizations may find the AmeriCorps structure and process challenging, and hopes that providing special consideration for this category of applicants may make it more

worthwhile for this type of organization to apply for AmeriCorps funding.

One commenter recommended that special consideration be given to programs that address a State priority. Section 2522.460 of the proposed rule, mirrored in the final rule, addresses the circumstances under which the Corporation will give special consideration to programs that address a State priority, rather than one of the Corporation's priorities.

The Corporation has added "disadvantaged youth" to § 2522.450(b)(1) to better align that selection preference with the Corporation's strategic goal of addressing the needs of that population. In addition, the Corporation has added programs that will be conducted in rural communities and in severely economically-distressed communities to the list in § 2522.450(c) to reflect the Corporation's goal of expanding the presence of AmeriCorps in those communities. To align our selection criteria with the Corporation's strategic goals, the final list of programs eligible for special consideration includes programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities, and programs that foster service opportunities for baby-boomers. Finally, the Corporation has more clearly defined in § 2522.450(b)(8) the types of community-development programs that may receive special consideration.

#### State Commission Rankings of Competitive Proposals (§ 2522.465)

The final rule mirrors the proposed rule in requiring State commissions to prioritize their State competitive proposals in rank order to help inform our selection process. The Corporation originally included this provision in response to State commission feedback that the Corporation sometimes did not fund proposals that a State considered its strongest or most competitive. The Corporation, however, had no way to know which proposals each State felt were most worthy of competitive funding and, thus, was unable to take that into consideration in the selection process.

The Corporation received several comments relating to this new requirement. One commenter strongly supported State rankings because States are in a better position to know the local needs than anyone else. On the other hand, two commenters opposed State rankings based on the increase in time and effort it will take at the State level, and the uncertainty of whether the Corporation will abide by the rankings.

Several commenters expressed concern over the Corporation's lack of specificity about how and when the Corporation would use the rankings, and what criteria States should use in ranking the proposals.

The Corporation intentionally did not specify how States should go about ranking their proposals, in an effort to give maximum flexibility to each State to decide what is important to that State. The Corporation understands that each State may rank its proposals based on different criteria and different priorities. The Corporation expects States to rank their proposals based on the relative quality of the proposals. In providing the rankings, a State will have the ability to summarize the process and criteria it used in ranking its proposals.

With respect to how and when the Corporation will use the rankings, the proposed rule stated that the Corporation "may consider" them, and made clear that we would not necessarily be bound by them in making grant decisions. Again, the State rankings will not be determinative or definitive. However, the Corporation will use them as a way of checking against potential disparities in the peer review process to ensure appropriate treatment for a program that a State highly values. For example, if a proposal that a State has ranked very high scores very low in peer review, the Corporation may move that proposal to staff review to ensure that the peer review scores were, in fact, appropriate. If the staff review agreed with peer review, the proposal would not move forward, despite its top ranking from the State. The Corporation also plans to use the rankings towards the end of the selection process to assist us in determining the best funding package for each State. The Corporation does not believe it necessary to amend the regulatory language to reflect this. The only change in the final rule is to clarify that the Corporation "will," rather than "may" consider rankings.

In the proposed rule, the Corporation indicated that we may, in the future, choose to limit the number of proposals any one State may submit for State competitive funding to streamline the selection process and make optimal use of outside peer review panels. One commenter opposed any such limitation. The Corporation notes that it has limited the number of proposals a State may submit in at least one past competition. The Corporation does not, however, intend to implement this limitation in the short-term, but reserves the right to do so in the future. If so, we will announce the limitation in the

appropriate NOFA or other funding announcement.

#### State Peer Review and Selection Processes (§ 2522.475)

In the proposed rule, the Corporation addressed questions about State commission peer review requirements and why the Corporation conducts peer reviews of proposals that State commissions may have already peer reviewed. Section 133(d)(4) of the NCSA requires the Corporation to “establish panels of experts” to review applications for funding for more than \$250,000, and to consider the opinions of the panels prior to making grant decisions. Again, while the regulatory language does not specify this, the Corporation wishes to clarify that the Corporation does not require State commissions to peer review AmeriCorps State competitive proposals. The Corporation conducts peer reviews of competitive proposals at the national level to ensure equitable consideration of all applications and to comply with the NCSA. A State commission may be required, under State law, to peer review State competitive proposals, or it may choose to do so on its own. The Corporation does require State commissions to peer review their formula proposals to ensure compliance with the NCSA, as the Corporation never has the opportunity to peer review those proposals at a national level.

Two commenters strongly supported State commissions using peer reviews to decide which applications to propose for funding. One commenter suggested that if States are not required to conduct peer review processes, they will have to expend a great deal of energy to ensure fairness and objectivity in their selection process. Again, State commissions must peer review formula proposals and may use a peer review process for competitive proposals if they so choose. The Corporation recognizes that State commissions that peer review all the proposals they receive in selecting both their competitive and formula submissions, this leads to successive peer review of some applications. The Corporation, however, peer reviews all competitive proposals at the national level across all States so that we can establish a common review nationally, rather than State by State, and to comply with the statute.

In § 2522.475 of the proposed rule, the Corporation indicated that it “does not require [commissions] to use the Corporation’s selection criteria and priorities” in selecting State formula grant programs or operating sites. One commenter strongly supported this

policy. Two commenters, on the other hand, interpreted this language as inconsistent with the statutory requirement in 122 (b)(3) of the Act (42 U.S.C. 12572(b)(3)). These commenters read this section of the statute as requiring “universal use of the selection criteria” that the Corporation establishes for its own selection process. The NCSA does not support these commenters’ interpretation. The section of the NCSA in question deals specifically with “qualification criteria to determine eligibility” for AmeriCorps grants—that is to say, who is eligible to apply—which is different from determining who ultimately is selected to receive a grant from the pool of eligible applicants. The NCSA requires each recipient of AmeriCorps funds to use the qualification or eligibility criteria that the Corporation establishes, but does not require States to use the selection criteria the Corporation develops for deciding to whom to award funds.

Note, however, that 133 of the NCSA does include a list of required criteria that both the Corporation and States must include among the selection criteria they develop. (42 U.S.C. 12585). The list includes the following required criteria: (1) The quality of the national service program proposed to be carried out; (2) the innovative aspects of the national service program, and the feasibility of replicating the program; (3) the sustainability of the national service program based on evidence such as the existence of strong and broad-based community support for the program and of multiple funding sources or private funding for the program; (4) the quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs; (5) the extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program; (6) the extent to which projects would be conducted in one of the country’s distressed and neediest areas; and (7) for non-State applicants, the extent to which the application is consistent with the State-wide service plan of the State in which the projects would be conducted. The Corporation has added this list of required criteria to § 2522.475. The Corporation has incorporated all of these criteria in its selection process for AmeriCorps grants, and States must do the same.

#### F. Corporation Cost per Member Service Year (MSY) (§ 2522.485)

In the proposed rule, the Corporation’s goal was to strengthen the Corporation’s basic selection criteria, and explicitly include a program’s proposed Corporation cost per MSY as a key indicator of cost-effectiveness at § 2522.435. The proposed regulations also defined the Corporation cost per MSY as the budgeted grant costs divided by the number of MSYs awarded in the grant. The budgeted grant costs exclude: (1) Child-care for individual members, for which the Corporation pays directly; and (2) the education award a member may receive from the National Service Trust after successfully completing a term of service.

One commenter felt that using the term “budgeted grant costs” could be read to include both the Corporation’s share of budgeted grant costs as well as the grantee’s share. The commenter suggested that the Corporation amend this section to specify that we are referring to “the Corporation’s share of budgeted grant costs.” The Corporation agrees with this comment and has made this change in § 2522.485 of the final rule.

As stated in the proposed rule, the Corporation will announce annually any changes in the maximum program Corporation cost per MSY. Several commenters recommended that the mandated cost of living increase be indexed with corresponding increases in the Corporation cost per MSY. Two commenters suggested that organizations be allowed to apply for an increase in funding not just for the living allowance increases, but also increases in health care expenses. One commenter recommended that the Corporation grant exceptions in the maximum Corporation cost per MSY for programs incurring exceptionally high costs for members in States with high workers’ compensation premiums. In response, we note that the Corporation does not address Corporation cost per MSY by waiver; rather, we negotiate the Corporation cost per MSY for each program before awarding a grant. The Corporation sets a maximum Corporation cost per MSY for State programs to accommodate programs with inherently higher costs that make it difficult for them to meet the average Corporation cost per MSY. National Direct grantees have the ability to balance higher cost sites with lower cost sites to stay within their maximum Corporation cost per MSY. With rare exceptions, the Corporation does not believe it should fund programs whose



Corporation cost per MSY exceeds the maximum Corporation cost per MSY. That said, the Corporation does reassess annually the maximum Corporation cost per MSY for individual AmeriCorps State programs and the maximum average Corporation cost per MSY, and makes adjustments as necessary and appropriate.

We anticipate that making Corporation cost per MSY a competitive factor and gradually decreasing the Federal share of grantee costs through our sustainability efforts will, over time, create sufficient and optimum downward pressure on Corporation costs, both at the individual program level and within State portfolios, and is, ultimately, more appropriate than arbitrary maximum and maximum averages. In the short term, however, the Corporation will review annually the maximum Corporation cost per MSY and maximum average Corporation cost per MSY and consider granting a continuation or competing program's request to increase its Corporation cost per MSY by an amount not to exceed the statutorily-required percentage increase in its previous year's AmeriCorps member living allowance. (42 U.S.C. 12594(a)). However, the Corporation cannot, by rule, automatically index the Corporation cost per MSY to increases in the living allowance and other fixed costs, given the unpredictability of the annual appropriations process.

One commenter was concerned that the regulatory language itself did not articulate the Corporation's intent to consider increases in the allowable cost per MSY. The regulatory language establishes how an organization calculates its Corporation cost per MSY. The Corporation does not set a maximum in the regulation and, therefore, does not need to include any language about increases to the maximum.

As stated above and in the proposed rule, the Corporation will continue to hold State commissions to a maximum average, and direct grantees to a maximum Corporation cost per MSY. State commissions will calculate their portfolio's average Corporation cost per MSY by dividing the Corporation's share of the budgeted grant costs for all their AmeriCorps programs (including EAP and planning grants) by the number of member MSYs awarded across their portfolio of AmeriCorps programs. The budgeted grant costs do not include child-care for individual members, the education award a member receives from the National Service Trust for fulfilling a term of service, or non-program grant funds

such as a State commission's administrative grant, disability, or Program Development and Training (PDAT) funds. We encourage State commissions to use the Education Award and Professional Corps programs and national direct grantees to use "education award only" positions within their overall national direct grant as a way to lower their average Corporation cost per MSY, while maintaining high-quality programs.

One commenter asked the Corporation to allow States to receive a fixed number of Education Award Program slots annually for them to award through their State formula process. The Corporation does not believe that dividing up the allocation of Education Award Program positions among all State commissions would be a good use of these resources at this time. In addition, Federal policy is that grants should be made on a competitive basis. The NCSA authorizes the Corporation to award formula funds and corresponding AmeriCorps positions non-competitively, but we have no similar congressional directive for Education Award Program positions and grant funds. The Corporation believes that this is a matter best addressed through authorizing legislation, rather than regulation.

In the proposed rule, the Corporation discussed the possibility of excluding planning grants from a State's calculation of its average Corporation cost per MSY. Currently, the average Corporation cost per MSY for each commission includes the formula funds they use for planning grants. Some of the input the Corporation received prior to publishing the proposed rule for comment suggested that the Corporation give States more leeway to use planning grants to foster new AmeriCorps programs by taking the cost of planning grants out of the average Corporation cost per MSY calculation for each commission. Many commenters strongly supported the idea of excluding planning grants from the calculation of program costs. As indicated in the proposed rule, the Corporation plans to study the budgetary implications of this approach over the coming year. However, we are unable to implement this measure at this time given current budget constraints.

One commenter suggested that national direct grantees be allowed to exclude funds they use to train their members from their Corporation cost per MSY calculation, in the same way that State commission PDAT funds are excluded from the commission's average Corporation cost per MSY. This commenter also suggested that grantees

be allowed to exclude the costs required for in-depth program evaluation from the cost per MSY calculation. With respect to training funds, it would not be appropriate to exclude them from a national direct grantee's cost per MSY for several reasons. First, national directs often benefit from State PDAT allocations because each commission is strongly encouraged to include national direct grantees in any program development and training activities they conduct at the State level. In addition, while commissions do not include PDAT in their Corporation cost per MSY, their AmeriCorps program grants include training funds for programs, which are included in the Corporation cost per MSY calculation. Finally, the Corporation views PDAT funds as more similar to a commission's administrative grant than to program funds for purposes of calculating the commission's Corporation cost per MSY.

In response to a commenter's suggestion that evaluation costs be excluded from a program's Corporation cost per MSY, the Corporation does not agree. Evaluation is a program requirement and an essential cost of operating a successful program. The Corporation will take into account the impact of evaluation costs on a program's Corporation cost per MSY when applying the cost-effectiveness criteria in the selection process.

The Corporation will announce on its website at [www.nationalservice.gov](http://www.nationalservice.gov) the annual maximum average Corporation cost per MSY for State commissions and the maximum Corporation cost per MSY for national directs. For the 2005 program year, the maximum average Corporation cost per MSY for State commissions and the maximum Corporation cost per MSY for national directs will remain at the current level of \$12,400. The Corporation recognizes that the member living allowance may increase and we will review the maximum average cost per MSY annually with this and other changes to program costs, and our sustainability goals, in mind.

While we acknowledge that cost per MSY may be defined in several different ways, our methodology is intended primarily to enable grantees and subgrantees to manage Corporation costs at the program and State commission level, and to estimate the projected costs of proposed programs.

#### *G. Performance Measures and Evaluation (§§ 2522.500 Through 2522.740)*

The Corporation is continuing to build on the progress we have made in

demonstrating results, both to ensure that the Corporation continues to demonstrate the true impact of national service, and that programs continue to improve, as well as to fulfill the expectations laid out in the Government Performance Results Act of 1993, the Administration's Program Assessment Rating Tool (or PART), and Executive Order 13331 on National and Community Service Programs. The proposed rule codified the Corporation's current requirements for performance measurement, focused independent evaluation requirements on large grantees, and generally reflected current Corporation practice. In addition, the proposed rule described the relationship between performance measures, evaluations, and funding decisions. The Corporation believes that a stronger emphasis on performance measurement and evaluation will strengthen AmeriCorps programs and foster continuous improvement. In line with E.O. 13331, emphasizing performance measures and evaluation will also help us identify both best practices and models that merit replication, as well as programmatic weaknesses that can be corrected most effectively when identified early.

The proposed rule distinguished performance measurement from program evaluation, while making explicit that grant funds used to pay for either activity are not considered "administrative costs" or subject to the 5 percent statutory cap on administrative costs. A grantee would be allowed to use grant funds to pay for performance measurement and evaluation up to the approved amounts for such activities in its grant. These provisions remain largely unchanged in the final rule.

Several commenters viewed the proposed rule as increasing performance measures and the burden on grantees. While the proposed rule and final rule emphasize performance measures, neither the proposed rule, nor the final rule, is intended to increase the burden on grantees. The final rule generally codifies existing Corporation policy in this area.

One commenter was concerned that the Corporation does not use the data it collects for any type of national reporting. One of the Corporation's goals is to identify the best way to report the data that the Corporation collects to our grantees and the public. Currently, individual program officers use this information to assist in managing the grants and directing programs to the appropriate resources, as well as to assess program impact and effectiveness. The Corporation provides

information to the public using the data submitted by grantees and programs in the Corporation's annual Performance and Accountability Report ([www.cns.gov/about/reports.html](http://www.cns.gov/about/reports.html)). Also, the State Profiles and Performance Report presents performance results achieved by the Corporation's national and community service programs ([www.cns.gov/pdf/research/CNCS-PerformanceReport-Ind.pdf](http://www.cns.gov/pdf/research/CNCS-PerformanceReport-Ind.pdf)). This recently released report is the first report offering comprehensive performance data by State and program. Finally, the Corporation is in the process of redesigning its Web site so that members of the public and grantees can more easily negotiate the site and locate pertinent information and reports. The Corporation views this as an ongoing process of increasing the availability and transparency in our reporting of performance data. The Corporation will continue to collaborate with grantees to make better use of data and to ensure that a key benefit of all reporting is the opportunity to see data reflected back in broader context.

One commenter opposed the Corporation's performance measures requirement because, in this commenter's opinion, they have made applying for AmeriCorps funds more confusing and have increased the complexity and detail of reporting. This commenter recommended returning to simple objectives or using simplified performance measures.

The Federal government, as a whole, is moving towards performance measurement and reporting on outcomes. The Corporation does not believe that the previous system of reporting on objectives provided enough detail or substance to show the true impact national service has in our communities across the nation.

#### Defining Performance Measurement, Outputs, and Outcomes

In sections 2522.520, 2522.570, and 2522.700 of the proposed rule, the Corporation defined the terms performance measurement, output indicators, intermediate-outcome indicators, and end-outcome indicators. One commenter found the use of the word "indicator" in these definitions misleading, given that the rest of the rule does not refer to indicators, and suggested that the Corporation resolve the mismatch in the final rule. Another commenter suggested that the final rule broaden the definitions to include references to community changes in addition to changes in the lives of community beneficiaries. The Corporation agrees with both these comments, and has (1) removed the

word indicator from the above-referenced sections, and (2) broadened the language of the definitions in the above-referenced sections to include changes to the community.

#### National Performance Measures (§ 2522.590(b))

While the proposed rule allowed an applicant organization to propose and negotiate performance measures unique to the applicant's program, the rule also provided that the Corporation would establish one or more national performance measures on which all grantees would have to report. The proposed rule indicated that the Corporation would establish a national performance measure on volunteer leveraging, may establish performance measures of member satisfaction, and will develop any national standardized performance measures in consultation with AmeriCorps grantees.

In general, most commenters supported the concept of developing national performance measures for all programs. However, several commenters noted potential concerns, such as the ability of these national measures to reflect the diversity of programs and approaches, the ability of programs to set their own measure of how well they are meeting needs in their communities, the need to preserve creativity and innovation of local programs, and the potential for programs to be redesigned to fit a certain model based on the national performance measures, rather than being designed to meet community needs. Several commenters suggested that the Corporation consult with grantees in developing any national performance measures.

The Corporation does intend, as stated in the proposed rule, to develop a limited number of national measures applicable to all (or most) programs, such as the number of community volunteers leveraged, hours served by community volunteers, and member-related measures, in addition to the program-nominated national performance measures. The Corporation also plans to develop other standard national measures that might apply only to particular types of programs or activities. The Corporation's goal in doing this will be to diminish the burden on grantees to develop measures in these areas, and to provide the Corporation with consistent measures on which to report at the national level. This process of developing national outcome measures for all programs to reflect their impact on communities or the lives of service recipients is a long-term project, given the diversity of programs and issue areas. Even within

a single issue area, such as youth development or environment, the diversity of programs addressing different needs and interests makes it challenging to develop uniform outcome measures at the national level without significant dialogue with State commissions and our other service partners. Finally, the Corporation notes that national measures will not replace the need for or the ability of programs to show progress in areas of local concern through program-nominated measures. The Corporation intends, as reflected in the proposed rule, to engage the field in developing any national performance measures, through an open public process, and plans to finalize member-related national measures within 18 months of publication of this final rule. The Corporation will continue to dialogue with the field in developing these and other national measures over the coming months and years. The Corporation, does not, however, see a need to change the language in § 2522.590(b) of the proposed rule.

#### Measuring Performance of the "Primary" Service Activity (§ 2522.580)

Section § 2522.580(b) and (c) of the proposed rule stated that performance measures need not cover the scope of an entire program, but should give a clear indication of a program's primary purpose and objectives. Section 2522.580(c) also required programs to include at least one end-outcome measure that captures the results of the *program's primary activity*.

Several commenters noted that their programs, mostly intermediary models, do not have a primary activity, but rather engage in many different activities in different issue areas. One commenter suggested that the rule define the elements of an intermediary program and accept performance measures that speak to an intermediary's overall goal. Another commenter recommended embracing the overall goal of the intermediary program to allow programs to collect performance measurement across service activities focused on areas such as large-scale capacity building.

If at all possible, intermediaries should report on the activities of their operating sites or subgrantees. We recognize, however, that in some cases this is not feasible. If it is not possible for an intermediary to identify a primary or significant area of activity, the Corporation is open to considering other measures that relate specifically to the overall mission and focus of the intermediary organization itself. For example, an intermediary organization

with members placed at multiple unaffiliated sites, through which members participate in many different activities in many different communities, might be able to submit a measure relating to the extent to which the intermediary is building the capacity of grass-roots organizations to serve their communities. For another program in which members engage in many different activities, the program may nonetheless be able to identify one activity that makes up a significant part of the program's service activities, and report an end-outcome on that activity. To clarify our intent in this regard, the Corporation has incorporated what was paragraph (c) of § 2522.580 in the proposed rule into paragraph (a)(1) of that section, and changed the language to capture the results of "the program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity."

The Corporation is also modifying the requirement that only an end-outcome capture the program's primary activity or area of significant activity. The Corporation has concluded that, as a general matter, a program would likely need to start with an output and an intermediate outcome, in order to be able to report on an end outcome. Furthermore, the Corporation has an interest in seeing at least one set of performance data on a program's primary activity or area of significant activity. Consequently, the final rule requires that grantees submit at least one set of aligned measures (described in more detail below), rather than just an end-outcome, on the program's primary activity or area of significant activity. Programs should note that, in addition to the minimum requirements, they may submit additional relevant measures of their performance in other issue areas.

One commenter opined that end outcomes, in general, are not reasonable in AmeriCorps because of the annual turnover of members. This commenter recommended that the Corporation not require end outcomes. The Corporation has made available guidance and technical assistance materials to the field on how programs can achieve end-outcomes, not within a member service year, but within the grant period (See [www.nationalservice.gov/resources](http://www.nationalservice.gov/resources) for information on toolkits, available Corporation assistance, and helpful websites.) While programs may not be able to achieve some end-outcomes, such as preventing air pollution, they can achieve measurable results. Youth development and education programs can assess improvements in

achievement and behavior of youth tutored and mentored, environmental programs can measure changes in water pollution and improvements in lands and trails, and programs designed to develop members can achieve outcomes such as members obtaining GEDs, developing specific skills, or entering careers based on their program experience. Logic models can be very helpful tools in helping programs to identify clear and measurable outcomes and understand the steps along the way in achieving their goals, each of which can be measured and used as performance measures.

#### Aligning Performance Measures (§ 2522.580)

Section § 2522.580(d) of the proposed rule required programs to choose at least one set of performance measures that are aligned with one another. For example, a tutoring program might use the following aligned performance measures: (1) Output: Number of students participating in a tutoring program; (2) Intermediate Outcome: Percent of students reading more books; and (3) End Outcome: Average increase in reading level or test scores. The Corporation included this requirement to allow both service programs and Corporation staff to understand the logical connections between each step in the chain from program activity to program performance and results. As discussed above, the final rule in § 2522.580(a)(1) requires that the one required set of aligned performance measures must capture the program's primary activity or area of significant activity. The Corporation believes that this will provide a clearer picture of the extent to which programs are demonstrating results.

Several commenters noted that their programs engage in many different activities in different issue areas, and, therefore, want to submit measures in several areas rather than just one set of aligned measures in only one area. Several commenters appeared to read the provision as requiring all the performance measures of a program to be aligned and speak to the same priority—for example, if a program chooses one set of performance measures on tutoring, all its performance measures must relate to tutoring and tutoring activities. One commenter suggested revising the language to clarify that one set of aligned performance measures is the minimum requirement, but that any additional performance measures that a program submits need not be aligned.

The Corporation believes that it is important for a program to identify the

connections between activities and results, and to have information to assess performance. That is the impetus for continuing to require one set of aligned performance measures—that is to say one output, one intermediate outcome, and one end-outcome all relating to the same primary activity or priority. The Corporation does not, however, expect that all of a program's performance measures, beyond the one required set of aligned measures, will speak to the same priority, or to the program's primary activity. Nor does the Corporation require programs to submit more than one aligned set of measures. A program may, once the minimum requirement of one set of three aligned measures is satisfied, submit relevant additional measures of their performance in other issue areas that do not necessarily need to be aligned. For example, a program may submit a set of performance measures around tutoring, such as the example given above, and, in addition, provide various outputs, intermediate outcomes, or end outcomes relating to other program activities such as volunteer recruitment or support, mentoring, or member development. To make this clear, the Corporation is amending the language in § 2522.580(d) and (f) of the proposed rule (§ 2522.580(a) and (d) of the final rule) to make clear that one set of aligned measures is the minimum requirement, and that programs may submit additional performance measures that are aligned or are not aligned.

#### Flexibility To Change Performance Measures Over the Course of the Grant

Two commenters suggested that programs need flexibility to change measures in year two or three of a three-year grant to react to changing needs and unforeseen challenges. The proposed rule envisaged that programs would submit performance measures in the first year of their three-year grant on which they would report over the three-year period of the grant. The goal was to decrease the burden on our grantees to have to submit new performance measures each year, and to increase the value of the reporting over a longer period of time. That said, section 2522.640 of the proposed rule and the final rule specifically authorizes programs to change their performance measures, with Corporation or State commission approval as appropriate. Since this flexibility is already in the rule, the Corporation sees no need to change or add language to address this issue.

#### Grantees' Responsibilities in Meeting Performance Measures (§ 2522.630)

The final rule is more specific about what a corrective action plan to address performance deficiencies must include, and requires grantees to submit such a plan within 30 days of a determination that the grantee is not on track to meeting the performance measures.

#### Performance Measures and Funding Decisions

One commenter was concerned that the selection criteria in the proposed rule include a program's progress towards meeting performance goals in the decision of whether or not to fund the program. This commenter believed that this would result in programs lowering their performance goals to ensure that they meet them. The Corporation does not believe that this is a concern. Beyond any national performance measures that the Corporation may require of programs, the Corporation, or the State commission, will approve all other performance measures and, thus, will have the opportunity to ensure that each program is selecting ambitious performance measures upon which to report. In addition, the benefits the program anticipates and captures through performance targets are also significant elements of the selection criteria.

#### Evaluation

Section 131(d)(1) of the Act specifies that an applicant must arrange for an independent evaluation of an AmeriCorps national service program receiving assistance under Subtitle C of Title I of the Act, unless the applicant obtains Corporation approval to conduct an internal evaluation. The statute also authorizes the Corporation to make alternative evaluation requirements "based upon the amount of assistance" a grantee receives.

In light of these provisions, in the proposed rule the Corporation proposed revising its current requirement that all grantees arrange for independent evaluations, unless the Corporation approves an internal evaluation. The proposed rule required that only the Corporation's largest grantees—those receiving an average annual program grant of \$500,000 or more—conduct an independent evaluation that covers a period of at least 5 years, and submit the evaluation results with their application for recompetitiveness funding. Our rationale for this approach was that it is burdensome to require independent evaluation for smaller grants, and, for larger grants, we wanted to give a grantee enough time to

complete a rigorous evaluation, and ensure that the Corporation receives it in time to consider with a grantee's second recompetitiveness application for funding. Under the proposed rule, the Corporation would not consider for funding any recompetitiveness application from a program receiving an average annual program grant of \$500,000 or more that did not include the required evaluation summary, or results, as applicable.

One commenter supported the proposed rule's approach to evaluation. Four commenters, however, opposed outside evaluations, because they use up resources that should be used in support of the program's service activities. One stated that outside evaluations are not helpful and usually lead to more questions than answers. Another noted that most programs lack the resources to develop the level of evaluation proposed and that it is difficult to pursue funding for evaluation and research.

While sensitive to the concerns of these commenters, the Corporation strongly believes in the value of independent evaluation, particularly for our largest grantees. Furthermore, the Corporation does not believe it unreasonable to require an independent evaluation from a grantee that has received over 2.5 million dollars from the Corporation, and is applying for additional funds, by the time it submits the evaluation results to us.

The Corporation also received many comments suggesting that the Corporation develop basic guidelines for assessing evaluations in the grant selection process, or that the Corporation nationalize or standardize the aggregated data to make it more useful. Several commenters suggested that the Corporation develop national guidelines on evaluation or standardized evaluation tools that programs could use for internal evaluations rather than paying for an external evaluator. Several commenters suggested that the Corporation develop national evaluation standards for all programs, while others suggested standardized evaluation criteria. One commenter recommended that the Corporation design flexible questionnaires on the data it seeks in evaluations, which would save large programs thousands of dollars through standardization.

Two State commissions recommended that the Corporation establish a national evaluation agenda with two components: (1) Competitive funds for commissions to engage in statewide AmeriCorps program evaluations, and (2) a Corporation-conducted national evaluation to assess

the impact and effectiveness of program models nationally. Another State commission suggested that the Corporation work with State commissions to perform statewide evaluations. This commenter agreed that evaluations are important for all programs, big and small, and therefore recommended requiring evaluations for all programs. Another commenter recommended funding "statewide and or national evaluations that are both cost-effective and provide potentially broader analysis and impact data." Another commenter recommended that the Corporation either provide programs the tools to conduct internal evaluations, or provide funding to offset the cost of external evaluations.

The Corporation intends to work cooperatively with grantees and other interested parties with a goal of seeking input on one or more strategies like those suggested in the comments, including, potentially, national Corporation-administered evaluations, statewide evaluations, and the development of evaluation tools and guidelines for grantees to use in performing internal evaluations. The Corporation will offer sufficient opportunity to grantees and other interested parties to provide input. In the meantime, however, the Corporation is maintaining, in this final rule, the requirement from the proposed rule that any grantee that receives an average annual grant of \$500,000 or more must arrange for an independent evaluation. In anticipation of other potential evaluation strategies, however, the final rule also includes language from the NCSA that requires grantees to cooperate with requests for information for any national evaluation that the Corporation or one of its providers may conduct. The Corporation will consider relieving grantees of the requirement to conduct an evaluation if a grantee participates in national or statewide evaluations, or uses the evaluation tools the Corporation develops.

One commenter requested clarification on whether the threshold for independent evaluation is the total program budget or the Corporation share only. As stated above, the independent evaluation requirement applies to any grantee that receives an average annual grant of \$500,000 or more—in this specific context, the term "grant" refers to the amount the Corporation provides in grant funds, not the total program revenues from other sources. The final rule refers to the "Corporation" program grant to make this point clear.

#### Independent Evaluation (§ 2522.700)

In defining evaluation in the proposed rule, the Corporation referred to evaluation as using scientifically-based research methods to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. The proposed rule intended to include random assignment as one example of a scientifically-based research method, but erroneously made it appear like random assignment was the only type of method the Corporation would allow. The Corporation received many comments opposing the requirement of random assignment evaluations, and other comments requesting that we more clearly define "scientifically-based" to include other methods of evaluation other than random assignment. To avoid any confusion, the Corporation has amended the final rule to remove the reference to random assignment methods. This should make clear that a program may use any appropriate scientifically-based evaluation method it chooses.

Scientifically-based research can be broadly defined as using appropriate research design, methods, and techniques to ensure that the methods used can reliably address the research questions and support the conclusions. Scientifically based research describes research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to activities and programs.

When organizations are attempting to determine whether there is a causal relationship between their programs and observed outcomes, or whether a program caused a change for participants, they will need to employ an experimental or quasi-experimental design or demonstrate how their study design will allow them to determine causality. One of the key characteristics of experimental designs is random assignment of persons or entities to treatment (or experimental) and control (or comparison) conditions. For example, participants in the treatment condition may receive benefits or services, while participants in the control condition do not. This random assignment of persons to conditions should equalize preexisting differences between the two groups so that differences observed between the groups can be attributed to the program. If random assignment is not possible, then quasi-experimental designs can be employed. These designs rely on identifying appropriate comparison

groups, and may even take measurements at two or more points in time or include multiple comparisons in order to rule out or reduce threats to validity or alternative explanations for differences between the experimental and comparison groups.

Making comparisons to similar individuals not receiving services, whether through an experimental or quasi-experimental design, is an important part of ensuring the observed program effects are attributable to the programs and not to other factors. Comparison groups can be identified in several ways, including direct methods such as collecting information for similar individuals and communities not being served, and indirect methods such as using local, regional or national data or information available from federal, State and local agencies and private and nonprofit organizations. In the absence of comparison data, programs are limited in their capacity to demonstrate the added value of their program for the individuals and communities they serve.

For example, a tutoring program that is not able to serve all of the eligible students due to excess demand may be able to randomly select students to participate in the program. If random assignment is not feasible, the program may use a quasi-experimental approach to compare the achievement or literacy scores of the students served with those of similar students in nearby communities and schools. Alternatively, the program may compare students to benchmark information reported by local schools, school districts, or even State and national data on education achievement. A program may be able to successfully assess program results by comparing the achievement of the students they serve at multiple points in time (baseline, during the program, at the end of the program) against an appropriate comparison benchmarks. While not as rigorous as a random assignment design, quasi-experimental comparison group designs can provide reliable evidence of program effectiveness.

One commenter opposed the requirement that programs be evaluated in depth against a similar population that does not receive the benefits or services of the AmeriCorps program. This commenter believed that such a group is hard to find, and that data gathering would be difficult and error-prone. The Corporation disagrees. As discussed above, making comparisons to similar individuals not receiving services is an important part of ensuring the observed program effects are attributable to the programs and not to

other factors. Many programs attempt to create changes in individuals and communities, but can not provide evidence that any observed changes are due to the program. For example, because children learn and develop over time, youth development and education programs need to be able to measure the effects of their programs and compare them against the learning and development that occurs in other children. Comparisons can be identified in several ways, including direct methods such as collecting information from similar individuals or communities not being served, and indirect methods such as using local, regional or national data and information available from federal, State and local agencies, and private and nonprofit organizations. In the absence of comparison data, programs are limited in their ability to demonstrate the added value of their program for the individuals and communities they serve.

#### Evaluation Requirements for Smaller Grantees

In the proposed rule, the Corporation encouraged (but did not require) grantees who receive under \$500,000 in grant funds per year, to perform independent evaluations and indicated that the Corporation would consider the results of these evaluations when making decisions on an organization's application for funds. Several commenters found the term "encourage" ambiguous and felt it created a de facto requirement. At least one commenter suggested that the Corporation remove that requirement. One commenter suggested that the rule either (1) require only that programs "show improvement", but not necessarily a scientifically-based evaluation, or (2) permit programs to submit information for statewide evaluation.

The Corporation continues to believe that independent evaluations are intrinsically stronger and, often, more useful, than internal evaluations. That being said, the Corporation has removed the language encouraging smaller grantees to arrange for independent evaluations. The Corporation does believe that all effective programs need to continuously improve their results for both participants and the people they serve, and therefore expects all grantees to perform some type of evaluation as part of their programs, in accordance with the NCSA. Consequently, the Corporation is including in the final rule the statutory minimum requirement of an internal evaluation for smaller grantees.

#### Five-Year Timetable for Evaluations

At least one commenter found the proposed rule unclear on when a grantee will be expected to produce an evaluation. The Corporation is removing the requirement that an evaluation be conducted every 5 years. Rather, the Corporation will require each grantee to submit a summary of its evaluation plan with its first recompetitve application following the effective date of this provision, and the full evaluation results with its second recompetitve application for funding. For example, if a current grantee recompetes for funding in 2006, it will be required to submit with its application a summary of its evaluation plan or progress to date. If the grantee again recompetes for funding in 2009, it will have to submit the completed evaluation with its recompetitve application at that time. The evaluation must cover a minimum of one year, but may cover longer periods. This applies for both internal and independent evaluations.

#### Consideration of Evaluations in Selection Process

The proposed rule stated that the Corporation will consider in the grant selection process the results of any evaluation a grantee submits. One commenter strongly recommended that external professional evaluators review the evaluations that grantees submit, particularly if the evaluations will have a major impact on future funding. The Corporation agrees that this is a promising idea and will consider it in the future, funding permitting. The Corporation will use an evaluation that a grantee submits to inform our consideration of the selection criteria. The evaluation itself will not receive any score in the selection process.

#### Costs of Evaluation

Two commenters asserted that the independent evaluation requirement for large programs is an unfunded Federal mandate, through which the Corporation is forcing a program to decide how to pay for program evaluation for Corporation program operations. Several commenters noted that the independent evaluation requirement for large programs is an undue burden on those programs as compared with smaller programs. These commenters also noted that the requirement would increase the costs and Corporation cost per MSY for larger programs. Another commenter noted that, while evaluation is important, it is costly and will likely lead to programs cutting costs on other quality elements of the program. This commenter,

therefore, recommended that the Corporation bear the costs of evaluations beyond each program's budget, and that this cost not be counted in the total Corporation cost per MSY or operational costs of the program. Several commenters recommended that the Corporation pay for evaluation costs, or at the very least a percentage of evaluation costs for each program. As discussed earlier, the Corporation does not believe it appropriate to exclude evaluation costs from a program's Corporation cost per MSY. The Corporation will, however, consider the impact of evaluation costs on a program's Corporation cost per MSY in the context of applying the cost-effectiveness criteria in the grant selection process.

#### H. Qualifications for Members Serving as Reading Tutors and Requirements for Tutoring Programs (§§ 2522.900 Through 2522.950)

E.O. 13331 directs that school-based national and community service programs "should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services." The Corporation believes strongly that it is important to maintain consistency with the balance struck by the No Child Left Behind Act (NCLBA), which, on the one hand ensures that children who need tutoring are receiving the best possible support, and, on the other hand ensures AmeriCorps' continued support for our education system.

We therefore also strongly believe that these rules should not create burdens on AmeriCorps members and programs that are not already imposed by the NCLBA. Thousands of AmeriCorps members are providing invaluable support to children through a range of activities that the NCLBA has specifically exempted from coverage. To be consistent with the NCLBA, in setting tutor qualifications in the proposed rule, we narrowly defined "tutor" to include only individuals whose primary goal is to increase academic achievement in core subjects through planned, consistent, one-to-one or small-group activities and sessions, that build on students' academic strengths and target students' academic needs. We did not intend to establish qualifications for AmeriCorps members who engage in other school-related support activities, such as homework help provided as part of a safe-place-after-school program.

The proposed rule also confirmed that the qualification requirements for tutors and other paraprofessionals under the NCLBA apply to tutors who are

employees of the Local Education Agency (LEA) or school, as determined by the State, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school district.

Under the NCLBA, paraprofessionals (including tutors) who provide instructional support in Title I schools must have a secondary school diploma or its equivalent and must have: (a) Completed two years of study at an institution of higher education; or (b) Obtained an associate's or higher degree; or (c) Met a rigorous standard of quality and be able to demonstrate the appropriate and relevant job skills through a formal State or local academic assessment. For a member serving as a tutor, *other than one employed by the LEA or school*, the proposed rule required either that the member has a high school diploma (or its equivalent), or that the member passes a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program.

In addition, the proposed rule required tutoring programs to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision.

#### AmeriCorps Members as "employees" and Application of the NCLBA

Many commenters expressed concern over the characterization of AmeriCorps members as "employees" of, or "hired by" the LEA or school, particularly given that the NCSA specifically states that members are not to be considered employees of the programs with which they serve. Some of the commenters were concerned that identifying members in this way could bring them under the auspices of other employment and labor laws such as those dealing with minimum wage.

The Corporation used this terminology because that is how the U.S. Department of Education has characterized the distinction between those AmeriCorps members who will be covered by the NCLBA and those who will not. In its regulations implementing the NCLBA, the U.S. Department of Education defines a covered paraprofessional as any paraprofessional "hired by the LEA". 34 CFR 200.58(a)(1). In subsequent guidance on implementation of its rules, the Department of Education specifically

addressed the application of NCLBA paraprofessional requirements to AmeriCorps members working in schools as follows:

The National and Community Service Act states that AmeriCorps volunteers are not considered employees of the entities where they are placed (42 U.S.C. 12511 (17B)). Unless AmeriCorps volunteers are considered employees of a school district under State law, the paraprofessional requirements in section 1119 (see items B-1 and B-5) do not apply. U.S. Department of Education, Title I Paraprofessionals, Non-Regulatory Guidance, March 1, 2004.

Whether an AmeriCorps member is considered an employee under State law is a State law question, and not a Corporation determination. Over the years, there have been occasions when a particular State considered AmeriCorps members serving in that State to be employees for some purposes, such as minimum wage and overtime, or unemployment insurance. To the Corporation's knowledge, however, no State currently considers AmeriCorps members serving in schools to be employees for purposes of the NCLBA. In light of the confusion caused by the proposed rule, however, the Corporation is amending the language in this final rule to make clear that only those members considered to be hired by the LEA or school *under State law* must comply with NCLBA paraprofessional requirements.

Several commenters interpreted the proposed rule as extending NCLBA coverage and its requirements to AmeriCorps members who are not currently covered under that law. This was not the Corporation's intent. The Corporation's intent was simply to reiterate the current U.S. Department of Education rules on which AmeriCorps members may be subject to NCLBA. The Corporation is not imposing NCLBA requirements beyond what the U.S. Department of Education already requires.

Grantees should note that the NCLBA paraprofessional requirements apply to any individual who meets the definition of paraprofessional, including tutors. Again, the Corporation would expect grantees to determine whether its AmeriCorps members are covered paraprofessionals under the NCLBA and, therefore, subject to NCLBA requirements. If they are not covered paraprofessionals subject to NCLBA requirements, the grantee must then determine whether they are tutors, as defined in this rule, and therefore subject to the qualifications established by this rule.

One commenter indicated that at least six States have opted out of the NCLBA

and sixteen more have pending legislation to opt out. As stated above, this rule will not impose NCLBA requirements where they are not already applicable. States that have opted out of NCLBA requirements by choosing not to receive Title I Federal education funds will have only to ensure that any members serving as tutors, as defined in this regulation, meet the qualifications established by this regulation—*i.e.* a high-school diploma or its equivalent, or successful completion of a proficiency test—and provide training and supervision as required in this regulation.

#### Definition of "Tutoring"

As discussed above, the proposed rule narrowly defined "tutor" to include only individuals whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group activities and sessions, that build on students' academic strengths and target students' academic needs.

One commenter recommended that the Corporation clarify whether the definition of tutoring applies only in the K-12 years, or whether it would apply to a member "tutoring" pre-school children. Another commenter sought clarification on whether tutoring, as defined, in this regulation included adult-learning. The Corporation's intent, in this regulation, was to impose requirements on tutoring that occurs during the K-12 school years, as a parallel requirement to the NCLBA. We did not intend to extend the tutor qualification requirements to activities involving pre-kindergarten students or adults. Consequently, the Corporation has amended the regulation to make clear that tutoring in this regulation relates only to children in grades kindergarten through twelfth.

#### AmeriCorps Tutor Qualifications

As discussed above, for a member serving as a tutor, *other than one employed by the LEA or school* as determined by State law, the proposed rule required either that the member has a high school diploma (or its equivalent), or that the member pass a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program and screening requirements.

Two commenters found the proposed rules for tutor qualifications acceptable, and one of the two thought the increased qualifications would be

beneficial. One commenter commended the proposed rule because it established necessary standards and provided the flexibility for programs to test proficiencies appropriate for the local population and educational priorities. One commenter supported the rule as applied to non-profits and noted its importance in that it resolves issues raised by the NCLBA. On the other hand, one commenter criticized the rule as “unnecessary and burdensome,” and unbeneficial for innovative programs designed to meet community needs. Fifteen commenters expressed concern that they would not be able to recruit sufficient numbers of tutors who qualify under the proposed rule. Many commenters were in favor of some training and education requirements for tutors, but disagreed with the standards in the proposed rule. Some commenters believed that their tutoring programs are already successful with the tutors they currently recruit, train, test, and supervise, and therefore did not see the need for additional Corporation requirements. One commenter was concerned that this rule would lead to different member qualifications for tutors “hired by LEAs” versus those “hired by” non-profits. As discussed above, under current law and in the absence of an AmeriCorps regulation, there are already different standards for tutors considered by State law to be “hired by the LEAs” than other AmeriCorps tutors, as only those “hired by the LEAs” are subject to the paraprofessional requirements under the NCLBA. The Corporation is merely imposing some additional limited qualifications requirements on the group of tutors not covered by the NCLBA.

One commenter was also concerned about having different requirements for tutors depending upon the State law where the members were serving, and the impact that would have on multi-State programs. In the Corporation’s view, this is no different than any issue that might vary for multi-State programs depending upon State law. For example, some States cover AmeriCorps members under unemployment insurance laws, while others do not; some States cover members under workers’ compensation, while others do not. Any multi-State program with members serving in States covered by different laws has to deal with members potentially being treated one way in one State and another way in a different State. The application of the NCLBA on a State-by-State basis is no different.

One commenter expressed concern over the increased training costs necessary to meet the new training

requirements for members serving as tutors. The Corporation is aware that programs will need assistance in ensuring that tutors receive appropriate training and this issue will be part of our training and technical assistance strategy in the coming year.

Four commenters recommended that the current standards for tutors be maintained. One of these commenters supported requiring the high-school diploma or its equivalent, and successful completion of pre- and in-service training, but no proficiency test. One commenter recommended revising the rule to permit “qualified AmeriCorps members [to serve] as tutors without the requirement for specific levels of education or expensive competency tests.” In fact, the vast majority of AmeriCorps members have a high-school diploma or its equivalent before they begin serving. So no proficiency test will be necessary for most AmeriCorps members serving as tutors. The Corporation did not, however, want to limit the ability to tutor only to those with a high-school diploma or its equivalent, as we understand that some programs have members serving who do not have a high-school diploma or its equivalent but who, nonetheless, are competent tutors. Our intent was to ensure a minimum standard that all tutors must meet, while leaving flexibility to programs to engage as tutors individuals who would not qualify under a “high-school diploma or its equivalent” standard. We believe that the proficiency test accomplishes the goal of establishing this minimum requirement for the small number of members who may not have a high-school diploma or its equivalent. (We note that the equivalent of a high-school diploma includes more than just a GED, and we have included a technical amendment to the final rule in § 2510.20 to reflect the definition of recognized equivalent of a high-school diploma.)

One commenter questioned which proficiency test programs should use to qualify tutors and who would approve the test. The commenter stated that local LEAs and schools do not currently have an appropriate test for measuring proficiency and that the “on-line ParaPro test” can be very challenging. The Corporation does not expect programs to necessarily use the test that paraprofessionals must pass to qualify under the NCLBA. The program may use the test that it deems appropriate to test the proficiency of its members, be it in math or English, or whatever core subjects the member may tutor. To select skill exams or tests, programs should consider seeking input from

professionals in their local area. State Departments of Education, Adult Basic Education, or GED programs can provide names and sources of tests commonly used for basic subjects or skills at the level the program requires.

Potential proficiency tests might also include tests used by the U.S. Department of Education to enroll students who do not otherwise have a high-school diploma or its equivalent on what is known as an “ability-to-benefit basis.” The U.S. Department of Education periodically publishes the list of these approved tests and acceptable passing scores in the **Federal Register**. You may read the most recent list at 69 FR 26087 (May 11, 2004). We reiterate that a program is not required to use these tests. The program must determine an appropriate proficiency test given the focus of the program, the members recruited, and the population receiving the tutoring. The qualifications requirements for tutors in the final rule mirror the language of the proposed rule.

#### Tutor Program Requirements (§ 2522.940)

The proposed rule required tutoring programs to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision. One commenter commended the program requirements because they establish necessary standards and provide programs with implementation flexibility. This provision has not changed in the final rule.

#### *I. Non-Displacement of Volunteers* (§ 2540.100)

The Corporation’s focus has consistently been, pursuant to the Act, to fund programs meeting needs that would otherwise go unmet in their communities. The non-displacement rules are one way to ensure that programs are meeting unmet needs, rather than needs that employees or volunteers are meeting already. In addition, E.O. 13331 directed national and community service programs to avoid or eliminate any practice that displaces volunteers. Consequently, the proposed rule stated that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community, including partial displacement such as reducing a volunteer’s hours.

One commenter supported the new provision on volunteer displacement. Three commenters requested that the Corporation clarify in the final rule its definition of volunteer displacement,



and how the Corporation and grantees will monitor volunteer displacement.

Six other commenters did not support the provision and thought it may have unintended consequences. One of the reasons proffered was that programs often use AmeriCorps members to transition from an administrative design that is no longer able to meet community demands for service. In one commenter's State, AmeriCorps members put "legs under recruitment and outreach plans that were formerly the domain of one or two community volunteers. The result is more volunteers for the organization." One commission noted that the proposed rule language will focus attention on whether a particular volunteer function is assigned to an AmeriCorps member, rather than whether the AmeriCorps member's presence and work have resulted in a stronger community volunteer program. This commenter suggested that the Corporation focus the prohibition on the extent to which an AmeriCorps member's participation in a program results in "either fewer community volunteers or fewer hours of volunteer service by the organization's community volunteers." Five other commenters, including two commissions, made similar comments.

The Corporation does not believe that a focus on the number of volunteers or volunteer hours is appropriate, primarily because of the burden it would place on organizations to track those numbers. In fact, the final rule omits the reference to volunteer hours, but maintains the rest of the language from the proposed rule.

The Corporation wants our programs to build on, rather than substitute for, service that is already occurring in the non-profit world. We do not want programs to use AmeriCorps members for activities that a community volunteer is already performing. However, we will consider whether in bringing on AmeriCorps members, the grantee is launching new sites or new service activities, expanding the role of community volunteers in the program, improving the caliber or diversity of members enrolled, or promoting other strategies to expand the program or enhance its impact in the community.

Monitoring and enforcement of this prohibition will occur as they currently do with respect to displacement of employees: The Corporation and grantees will be alert to the issues of displacement of volunteers in the selection process; the Corporation will include non-displacement of volunteers as one of the assurances grantees will make when accepting a grant; Corporation program officers will ask a

program to demonstrate compliance if they have concerns; and, if a community volunteer raises displacement as an issue, the volunteer will have the option of filing a grievance at the program level, and the commission or the Corporation, as appropriate, will investigate any allegation of displacement as a compliance matter.

*J. Transitional Entities (§§ 2550.10 Through 2550.80)*

The National Service Trust Act of 1993 and the Corporation's regulations, originally issued in 1994, contemplated the existence of transitional entities, in addition to State commissions and alternative administrative entities, as State bodies that could be eligible to receive Corporation funding and administer national service programs on an interim basis. The provisions relating to transitional entities, however, sunsetted 27 months after the passage of the Act, or December 1995. The Corporation received no comments on this issue. The final rule is identical to the proposed rule and amends the regulations to remove any obsolete references to transitional entities.

*K. State Commissions Directly Operating Programs (§ 2550.80(j))*

Under the NCSA, a State commission or alternative administrative entity may not directly carry out any national service program that receives assistance under subtitle C of title I of the NCSA. 42 U.S.C. 12638(f). Currently, however, 45 CFR 2550.80 goes further than the statute by prohibiting State commissions from directly operating any national service program receiving assistance, in any form, from the Corporation. This means that, currently, a State commission is prohibited from operating not only a subtitle C AmeriCorps program, but also any subtitle H, Learn and Serve (except as permitted in the Learn and Serve legislation), AmeriCorps VISTA, or Senior Corps program. In the proposed rule, the Corporation proposed relaxing the restriction by amending the regulations to conform to the Act and give commissions more flexibility to directly operate non-subtitle C programs.

Six commenters were in favor of this provision, while fifty-one commenters opposed it. Most of the commenters opposing the provision represented Retired and Senior Volunteer Program and Foster Grandparent Program grantees or supporters, and specifically objected to State commissions directly operating Senior Corps programs. The Corporation was not persuaded by most of the reasons the commenters proffered

for why State commissions should not be allowed to directly operate Senior Corps programs. However, one of their main oppositions to this provision was that it would eliminate one of the greatest strengths of the National Senior Service Corps programs—the local governance and local decision-making by local community-based sponsors regarding program focus and activities.

One commenter suggested that, because of the significance of this issue, this proposed change should be addressed in reauthorization, rather than in regulation. The Corporation, however, has proposed going no further than the current statutory language allows and, thus, does not believe statutory language is necessary to permit State commissions greater involvement in program delivery.

Nonetheless, the Corporation appreciates the concerns that the commenters expressed over the local nature of Senior Corps programs and the local needs they address. Furthermore, the Corporation notes that its current policy and regulations prohibit a Senior Corps grantee from sub-granting, delegating, or contracting project management responsibilities to any other entity. 45 CFR 2551.22, 2552.22, and 2553.22. While this language does not, in and of itself, prohibit a State commission from becoming a Senior Corps project sponsor, it would require a commission, like any other sponsor, to handle all project management responsibilities itself. The Corporation does not believe that most State commissions are in a position to operate a Senior Corps program without the ability to delegate or subgrant, and agrees with the commenters that local organizations are in the best position to identify local needs and operate the programs.

Furthermore, the Corporation received no indication that State commissions are in any way eager to operate Senior Corps programs—their interest appears to lie more with AmeriCorps VISTA, Special Volunteer Programs, and other initiatives that the Corporation might fund with subtitle H funds. Note that, under the NCSA, only an LEA may apply for school-based Learn and Serve funds.

Consequently, the Corporation is changing the proposed language in section 2550.80(j) to allow State commissions to directly operate any national service program except for those that receive assistance under subtitle C of title I of the NCSA (AmeriCorps), and Title II of the Domestic Volunteer Service Act of 1973 (Senior Corps).

## VII. Effective Dates

The final rule will take effect September 6, 2005. However, the following sections will become operational for the 2006 program year:

§§ 2522.400 through 2522.475—

Selection Criteria and Process

§§ 2522.500 through 2522.650—

Performance Measures

§§ 2522.700 through 2522.740—

Evaluation Requirements

To the extent that certain sections of the final rule restate current Corporation policy, current policy will remain in effect until superseded by the regulation.

## VIII. Non-Regulatory Issues

### A. Streamlining Grantee Requirements and Aligning Them With Grantee Needs

In the Notice of Proposed Rulemaking, the Corporation indicated its intent to streamline our grant application and grant-making processes, and streamline and align with grantee needs our reporting and other requirements. In particular, we discussed revising the timing of the grant cycle to better accommodate programs with start dates in the fall; streamlining continuation grant application and reporting requirements; and clarifying and streamlining our guidance to the field.

Several commenters appreciated the Corporation's efforts to make the grant cycles and reporting requirements flexible based on the needs of grantees, to streamline grant applications and guidelines, to decrease the time it takes to make a grant award, and to cut unnecessary paperwork out of the grant-making process. The Corporation is continuing its efforts to better align the grant-making timetable with grantees' needs, and to streamline application and reporting requirements.

### Streamlining Continuation Grants and Reporting Requirements

Section 130 of the National and Community Service Act of 1990 authorizes the Corporation to determine the timing and content of applications for AmeriCorps funding. In the NPRM, the Corporation signaled its intent to change our continuation application requirements to minimize the burden on grantees, while ensuring that the Corporation receives the information it needs to make fiscally responsible continuation awards. Our goal is to streamline the application and review processes for continuations, as well as to give grantees more predictability over the three-year grant cycle.

In our discussion of the streamlining we envisioned in this area, the

Corporation stated that we intended to work with State commissions on a schedule that accommodates the different start dates of programs within a State's portfolio. We also stated that, because of the uncertainties of annual appropriations, we were reviewing how this process would affect continuation requests that include an expansion request (including both requests for more program funds and requests for more member MSYs), and may establish an alternate timetable for considering those requests.

Two commenters expressed concern about the impact of approving grants on a rolling basis and tying application and reporting requirements to program start dates. These commenters indicated that States have AmeriCorps programs under a single grant code for specific funding categories—formula, competitive, and EAP. Rolling grant approvals based on program start dates may necessitate a different grant code for each program and would force multiple grant codes to be open and managed for longer periods, according to these commenters. The Corporation does not intend to make separate grants for each program in a State commission's portfolio. Rather, the Corporation intends that a State commission's grant is awarded in time for the program in the State's portfolio with the earliest start date to begin operations.

One commenter discussed the possibility of establishing an alternative timetable for those programs that wish to include an expansion request with their continuation application. This commenter indicated an understanding of how uncertain the annual appropriations process is, but believed that a program should not potentially lose funding because there was no increase in appropriations. A continuation program, according to this commenter, should at least be guaranteed level funding, assuming that it meets all the requirements and demonstrates that it is a high-quality program. While the Corporation typically awards three-year grants, the grants are incrementally funded on an annual basis, and consequently contingent on the availability of appropriations. For continuation programs that are compliant and meeting performance measures, the Corporation makes every effort to ensure level operations, but we cannot guarantee funding across the three years of a grant. The Corporation is continuing to identify ways to streamline this process and will provide further guidance later this year.

### B. Maximizing a Grantee's Ability To Meet Objectives and Achieve Strong Outcomes

#### Re-Fill Rule

Since 2003, the Corporation prohibited programs from re-filling a slot when a member left without completing a term of service. We received 42 comments urging the Corporation to allow programs to refill vacant slots. On January 12, 2005, the Corporation implemented a change in the refill rule, on a pilot basis, to allow limited re-fill of positions. The Corporation will monitor and evaluate this pilot refill rule, and determine whether and to what extent to continue the refill rule in the future.

### C. Improving the AmeriCorps Member Experience

During the preliminary input process, the Corporation received input from current and former AmeriCorps members asking us to focus on their experience and the resources available to them. The Corporation has a strong interest in the AmeriCorps member experience and intends to further explore ways to improve it.

In particular, as we indicated in the Notice of Proposed Rulemaking, the Corporation intends to explore creating a member satisfaction survey through which AmeriCorps members would be able to evaluate their programs and their AmeriCorps experience. One commenter supported the creation of a member satisfaction survey to gauge members' experience with both their program and AmeriCorps, as long as it is not a requirement that programs use the survey that the Corporation creates. The Corporation is in the process of creating a national survey for AmeriCorps members and we intend to post the results on our Web site when they are available, for prospective members to consider. Although the survey will be open to all members, the Corporation has not yet determined whether programs will be required to ensure all members participate.

## IX. Rulemaking Analyses and Notices

### Executive Order 12866

The Corporation has determined that this rule, while a significant regulatory action, is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in an annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local,

or tribal government or communities. This is, however, a significant rule, and therefore has been reviewed by OMB.

The rule requires all grantees and subgrantees of the Corporation to increase, based on a predictable and incremental schedule, the grantee share of program costs. After the initial three-year grant period, a Corporation-funded program in its fourth year of operation must provide at least 26 percent of their overall program budget in matching money. During years five through ten of Corporation assistance, the program's required matching percentage increases gradually to 50 percent. Programs on the alternative match scale will begin increasing their share of match to 29 percent in the seventh year of operation, increasing gradually to 35 percent in the tenth year and beyond.

The initial impact of this change will be small. During the 2000–2002 grant period—the most recent three-year period where we have complete data on program budgets—about 20.2 percent of all AmeriCorps grantees and subgrantees had match percentages less than 26 percent. About 13 percent of these low-matching programs will not need to match at 26 percent immediately, because they would qualify for the lower match rate available for rural and low-income programs.

Among the rest of the low-matching programs, the average amount of matching money needed to reach the 26 percent level is about \$18,900 per program, or about \$2,274,700 per year across all AmeriCorps programs. The median program would require about \$13,700 in additional matching money to reach the 26 percent level. The total annual project amount needed would increase somewhat—to about \$2,806,500 per year—if all programs matched at the 26 percent level. All told, this analysis indicates that the programs that would be affected would require very little additional money to achieve a 26 percent match, and that the overall impact of the rule on Corporation programs falls well short of \$100 million annually.

#### *Regulatory Flexibility Act*

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the 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.

#### *Other Impact Analyses*

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047, 3045–0065, 3045–0100, and 3045–0101 and these may be revised before this rule becomes effective.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

#### **List of Subjects**

##### *45 CFR Part 2510*

Grant programs—social programs, Volunteers.

##### *45 CFR Part 2520*

Grant programs—social programs, Volunteers.

##### *45 CFR Part 2521*

Grant programs—social programs, Volunteers.

##### *45 CFR Part 2522*

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

##### *45 CFR Part 2540*

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers

##### *45 CFR Part 2550*

Administrative practice and procedure, Grant programs—social programs.

■ For the reasons stated in the preamble, 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 the definitions “recognized equivalent of a high-school diploma” and “target community” in alphabetical order to read as follows:

##### **§ 2510.20 Definitions.**

\* \* \* \* \*

*Recognized equivalent of a high-school diploma.* The term *recognized equivalent of a high-school diploma* means:

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high-school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high-school but who excelled academically in high-school, documentation that the student excelled academically in high-school and has met the formalized, written policies of the institution for admitting such students.

\* \* \* \* \*

*Target community.* The term *target community* means the geographic community in which an AmeriCorps grant applicant intends to provide service to address an identified unmet human, educational, environmental, or public safety (including disaster-preparedness and response) need.

\* \* \* \* \*

#### **PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS**

■ 1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 42 U.S.C. 12571–12595.

■ 2. Add a new § 2520.5 to read as follows:

##### **§ 2520.5 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee or an organization operating an AmeriCorps program.

■ 3. Revise § 2520.20 to read as follows:

**§ 2520.20 What service activities may I support with my grant?**

(a) Your grant must initiate, improve, or expand the ability of an organization and community to provide services to address local unmet environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(b) You may use your grant to support AmeriCorps members:

(1) Performing direct service activities that meet local needs.

(2) Performing capacity-building activities that improve the organizational and financial capability of nonprofit organizations and communities to meet local needs by achieving greater organizational efficiency and effectiveness, greater impact and quality of impact, stronger likelihood of successful replicability, or expanded scale.

**§ 2520.30 [Redesignated as § 2520.65]**

■ 4. Redesignate § 2520.30 as § 2520.65, and add the following sections: §§ 2520.25, 2520.30, 2520.35, 2520.40, 2520.45, 2520.50, 2520.55, and 2520.60.

**§ 2520.25 What direct service activities may AmeriCorps members perform?**

(a) The AmeriCorps members you support under your grant may perform direct service activities that will advance the goals of your program, that will result in a specific identifiable service or improvement that otherwise would not be provided, and that are included in, or consistent with, your Corporation-approved grant application.

(b) Your members' direct service activities must address local environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(c) Direct service activities generally refer to activities that provide a direct, measurable benefit to an individual, a group, or a community.

(d) Examples of the types of direct service activities AmeriCorps members may perform include, but are not limited to, the following:

- (1) Tutoring children in reading;
- (2) Helping to run an after-school program;
- (3) Engaging in community clean-up projects;
- (4) Providing health information to a vulnerable population;
- (5) Teaching as part of a professional corps;
- (6) Providing relief services to a community affected by a disaster; and
- (7) Conducting a neighborhood watch program as part of a public safety effort.

**§ 2520.30 What capacity-building activities may AmeriCorps members perform?**

Capacity-building activities that AmeriCorps members perform should enhance the mission, strategy, skills, and culture, as well as systems, infrastructure, and human resources of an organization that is meeting unmet community needs. Capacity-building activities help an organization gain greater independence and sustainability.

(a) The AmeriCorps members you support under your grant may perform capacity-building activities that advance your program's goals and that are included in, or consistent with, your Corporation-approved grant application.

(b) Examples of capacity-building activities your members may perform include, but are not limited to, the following:

- (1) Strengthening volunteer management and recruitment, including:
  - (i) Enlisting, training, or coordinating volunteers;
  - (ii) Helping an organization develop an effective volunteer management system;
  - (iii) Organizing service days and other events in the community to increase citizen engagement;
  - (iv) Promoting retention of volunteers by planning recognition events or providing ongoing support and follow-up to ensure that volunteers have a high-quality experience; and
  - (v) Assisting an organization in reaching out to individuals and communities of different backgrounds when encouraging volunteering to ensure that a breadth of experiences and expertise is represented in service activities.
- (2) Conducting outreach and securing resources in support of service activities that meet specific needs in the community;
- (3) Helping build the infrastructure of the sponsoring organization, including:
  - (i) Conducting research, mapping community assets, or gathering other information that will strengthen the sponsoring organization's ability to meet community needs;
  - (ii) Developing new programs or services in a sponsoring organization seeking to expand;
  - (iii) Developing organizational systems to improve efficiency and effectiveness;
  - (iv) Automating organizational operations to improve efficiency and effectiveness;
  - (v) Initiating or expanding revenue-generating operations directly in support of service activities; and
  - (vi) Supporting staff and board education.

(4) Developing collaborative relationships with other organizations working to achieve similar goals in the community, such as:

- (i) Community organizations, including faith-based organizations;
- (ii) Foundations;
- (iii) Local government agencies;
- (iv) Institutions of higher education; and
- (v) Local education agencies or organizations.

**§ 2520.35 Must my program recruit or support volunteers?**

(a) Unless the Corporation or the State commission, as appropriate, approves otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

(b) If you demonstrate that requiring your program to recruit or support volunteers would constitute a fundamental alteration to your program structure, the Corporation (or the State commission for formula programs) may waive the requirement in response to your written request for such a waiver in the grant application.

**§ 2520.40 Under what circumstances may AmeriCorps members in my program raise resources?**

(a) AmeriCorps members may raise resources directly in support of your program's service activities.

(b) Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

- (1) Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;
- (2) Writing a grant proposal to a foundation to secure resources to support the training of volunteers;
- (3) Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individuals;
- (4) Securing financial resources from the community to assist in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of a community-based organization;
- (5) Seeking donations from alumni of the program for specific service projects being performed by current members.

(c) AmeriCorps members may not:

- (1) Raise funds for living allowances or for an organization's general (as opposed to project) operating expenses or endowment;

(2) Write a grant application to the Corporation or to any other Federal agency.

**§ 2520.45 How much time may an AmeriCorps member spend fundraising?**

An AmeriCorps member may spend no more than ten percent of his or her originally agreed-upon term of service, as reflected in the member enrollment in the National Service Trust, performing fundraising activities, as described in § 2520.40.

**§ 2520.50 How much time may AmeriCorps members in my program spend in education and training activities?**

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program, as reflected in the member enrollments in the National Service Trust, may be spent in education and training activities.

(b) Capacity-building activities and direct service activities do not count towards the 20 percent cap on education and training activities.

**§ 2520.55 When may my organization collect fees for services provided by AmeriCorps members?**

You may, where appropriate, collect fees for direct services provided by AmeriCorps members if:

(a) The service activities conducted by the members are allowable, as defined in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and

(b) You use any fees collected to finance your non-Corporation share, or as otherwise authorized by the Corporation.

**§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?**

You must follow all applicable OMB circulars on allowable costs (OMB Circular A-87 for State, Local, and Indian Tribal Governments, OMB Circular A-122 for Nonprofit Organizations, and OMB Circular A-21 for Educational Institutions). In general, the OMB circulars do not allow the following as direct costs under the grant: Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

**PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD**

■ 1. The authority citation for part 2521 is revised to read as follows:

**Authority:** 42 U.S.C. 12571-12595.

■ 2. Add a new § 2521.5 to read as follows:

**§ 2521.5 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

■ 3. Establish a new § 2521.95 with the heading as set forth below.

**§ 2521.95 To what extent may I use grant funds for administrative costs?**

**§ 2521.30 [Amended]**

■ 4-5. Transfer the text of paragraph (h) of § 2521.30 to new § 2521.95, and remove § 2521.30(g); and:

■ a. In new § 2521.95, redesignate transferred paragraphs (h)(1), (h)(2) and (h)(3) introductory text as (a), (b), and (c), respectively;

■ b. Redesignate transferred (h)(3)(i), (h)(3)(i)(A), and (h)(3)(i)(B) as (c)(1), (c)(1)(i), (c)(1)(ii), respectively; and

■ c. Redesignate transferred (h)(3)(ii) and (h)(3)(iii) as (c)(2), and (c)(3), respectively.

■ 6. Add a new center heading after § 2521.30 as set forth below.

**Program Matching Requirements**

■ 7. Add the following sections: §§ 2521.35, 2521.40, 2521.45, 2521.50, 2521.60, 2521.70, 2521.80, and 2521.90.

**§ 2521.35 Who must comply with matching requirements?**

(a) The matching requirements described in §§ 2521.40 through 2521.95 apply to you if you are a subgrantee of a State commission or a direct program grantee of the Corporation. These requirements do not apply to Education Award Programs.

(b) If you are a State commission, you must ensure that your grantees meet the match requirements established in this part, and you are also responsible for meeting an aggregate overall match based on your grantees' match individual match requirements.

**§ 2521.40 What are the matching requirements?**

If you are subject to matching requirements under § 2521.35, you must adhere to the following:

(a) Basic match: At a minimum, you must meet the basic match requirements as articulated in § 2521.45.

(b) Regulatory match: In addition to the basic requirements under paragraph (a) of this section, you must provide an overall level of matching funds according to the schedule in § 2521.60(a), or § 2521.60(b) if applicable.

(c) Budgeted match: To the extent that the match in your approved budget exceeds your required match levels

under paragraph (a) or (b) of this section, any failure to provide the amount above your regulatory match but below your budgeted match will be considered as a measure of past performance in subsequent grant competitions.

**§ 2521.45 What are the limitations on the Federal government's share of program costs?**

The limitations on the Federal government's share are different—in type and amount—for member support costs and program operating costs.

(a) *Member support:* The Federal share, including Corporation and other Federal funds, of member support costs, which include the living allowance required under § 2522.240(b)(1), FICA, unemployment insurance (if required under State law), worker's compensation (if required under State law), is limited as follows:

(1) The Federal share of the living allowance may not exceed 85 percent of the minimum living allowance required under § 2522.240(b)(1), and 85 percent of other member support costs.

(2) If you are a professional corps described in § 2522.240(b)(2)(i), you may not use Corporation funds for the living allowance.

(3) Your share of member support costs must be non-Federal cash.

(4) The Corporation's share of health care costs may not exceed 85 percent.

(b) *Program operating costs:* The Corporation share of program operating costs may not exceed 67 percent. These costs include expenditures (other than member support costs described in paragraph (a) of this section) such as staff, operating expenses, internal evaluation, and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds (as long as the other Federal agency permits its funds to be used as match), or third party in-kind contributions.

(2) Contributions, including third party in-kind must:

(i) Be verifiable from your records;

(ii) Not be included as contributions for any other Federally assisted program;

(iii) Be necessary and reasonable for the proper and efficient accomplishment of your program's objectives; and

(iv) Be allowable under applicable OMB cost principles.

(3) You may not include the value of direct community service performed by volunteers, but you may include the value of services contributed by volunteers to your organizations for organizational functions such as

accounting, audit, and training of staff and AmeriCorps programs.

**§ 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share of costs?**

If you are an Indian Tribe that receives tribal funds through Public Law 93-638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and you may use them towards your share of costs, including member support costs.

**§ 2521.60 To what extent must my share of program costs increase over time?**

Except as provided in paragraph (b) of this section, if your program continues to receive funding after an initial three-year grant period, you must continue to meet the minimum requirements in § 2541.45 of this part. In addition, your required share of program costs, including member support and operating costs, will incrementally increase to a 50 percent overall share by the tenth year and any year thereafter

that you receive a grant, without a break in funding of five years or more. A 50 percent overall match means that you will be required to match \$1 for every \$1 you receive from the Corporation.

(a) *Minimum Organization Share:* (1) Subject to the requirements of § 2521.45 of this part, and except as provided in paragraph (b) of this section, your overall share of program costs will increase as of the fourth consecutive year that you receive a grant, according to the following timetable:

	Year 1 (per-cent)	Year 2 (per-cent)	Year 3 (per-cent)	Year 4 (per-cent)	Year 5 (per-cent)	Year 6 (per-cent)	Year 7 (per-cent)	Year 8 (per-cent)	Year 9 (per-cent)	Year 10 (per-cent)
Minimum member support .....	15	15	15	15	15	15	15	15	15	15
Minimum operating costs .....	33	33	33	33	33	33	33	33	33	33
Minimum overall share .....	N/A	N/A	N/A	26	30	34	38	42	46	50

(2) A grantee must have contributed matching resources by the end of a grant period in an amount equal to the combined total of the minimum overall annual match for each year of the grant period, according to the table in paragraph (a)(1) of this section.

(3) A State commission may meet its match based on the aggregate of its

grantees' individual match requirements.

(b) *Alternative match requirements:* If your program is unable to meet the match requirements as required in paragraph (a) of this section, and is located in a rural or a severely economically distressed community, you may apply to the Corporation for a

waiver that would require you to increase the overall amount of your share of program costs beginning in the seventh consecutive year that you receive a grant, according to the following table:

	Year 1 (per-cent)	Year 2 (per-cent)	Year 3 (per-cent)	Year 4 (per-cent)	Year 5 (per-cent)	Year 6 (per-cent)	Year 7 (per-cent)	Year 8 (per-cent)	Year 9 (per-cent)	Year 10 (per-cent)
Minimum member support .....	15	15	15	15	15	15	15	15	15	15
Minimum operating costs .....	33	33	33	33	33	33	33	33	33	33
Minimum overall share .....	N/A	N/A	N/A	N/A	N/A	N/A	29	31	33	35

(c) *Determining Program Location.* (1) The Corporation will determine whether your program is located in a rural county by considering the U.S. Department of Agriculture's Beale Codes.

(2) The Corporation will determine whether your program is located in a severely economically distressed county by considering unemployment rates, per capita income, and poverty rates.

(3) Unless the Corporation approves otherwise, as provided in paragraph (c)(4) of this section, the Corporation will determine the location of your program based on the legal applicant's address.

(4) If you believe that the legal applicant's address is not the appropriate way to consider the location of your program, you may request the waiver described in paragraph (b) of this section and provide the relevant facts about your program location to support your request.

(d) *Schedule for current program grants:* If you have completed at least

one three-year grant cycle on the date this regulation takes effect, you will be required to provide your share of costs beginning at the year three level, according to the table in paragraph (a) of this section, in the first program year in your grant following the regulation's effective date, and increasing each year thereafter as reflected in the table.

(e) *Flexibility in how you provide your share:* As long as you meet the basic match requirements in § 2521.45, you may use cash or in-kind contributions to reach the overall share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required overall match by raising only more member support match, and leave operational match at the basic level, as long as you provide the required overall match.

(f) *Reporting excess resources.* (1) The Corporation encourages you to obtain support over-and-above the matching fund requirements. Reporting these resources may make your application

more likely to be selected for funding, based on the selection criteria in §§ 2522.430 and 2522.435 of these regulations.

(2) You must comply with § 2543.23 of this title and applicable OMB circulars in documenting cash and in-kind contributions and excess resources.

**§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.45 and 2521.60 of this part?**

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.45 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

(b) If you are requesting a waiver, you must demonstrate:

(1) The lack of resources at the local level;

(2) That the lack of resources in your local community is unique or unusual;

(3) The efforts you have made to raise matching resources; and

(4) The amount of matching resources you have raised or reasonably expect to raise.

(c) You must provide with your waiver request:

(1) A request for the specific amount of match you are requesting that the Corporation waive; and

(2) A budget and budget narrative that reflects the requested level in matching resources.

**§ 2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?**

(a) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for five years or more, as determined by the end date of your most recent grant period, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

(b) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for fewer than five years, you must begin matching at the same level you were matching at the end of your most recent grant period.

**§ 2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?**

If your organization is a new or replacement legal applicant for an existing program, you must provide matching resources at the level the previous legal applicant had reached at the time you took over the program.

**PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS**

■ 1. The authority citation for part 2522 is revised to read as follows:

**Authority:** 42 U.S.C. 12571–12595.

■ 2. Add a new § 2522.10 to subpart A to read as follows:

**§ 2522.10 What definitions apply to this part?**

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

■ 3. Amend § 2522.250 as follows:

■ a. In paragraph (a)(3) revise the text to read as follows; and

■ b. In paragraph (b)(3) revise the paragraph heading, and paragraph (b)(3)(i), to read as follows:

**§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

(a) \* \* \*

(3) \* \* \* The amount of the child-care allowance may not exceed the

applicable payment rate to an eligible provider established by the State for child care funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

\* \* \* \* \*

(b) \* \* \*

(3) *Corporation share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Corporation's share of the cost of health coverage may not exceed 85 percent.

\* \* \* \* \*

■ 4a. Revise § 2522.400 and § 2522.410 to read as follows:

**§ 2522.400 What process does the Corporation use to select new grantees?**

The Corporation uses a multi-stage process, which may include review by panels of experts, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

**§ 2522.410 What is the role of the Corporation's Board of Directors in the selection process?**

The Board of Directors has general authority to determine the selection process, including priorities and selection criteria, and has authority to make grant decisions. The Board may delegate these functions to the Chief Executive Officer.

**§ 2522.420 [Redesignated as § 2522.480]**

■ 4b. Redesignate § 2522.420 as § 2522.480.

■ 5. Add the following sections: §§ 2522.415, 2522.420, 2522.425, 2522.430, 2522.435, 2522.440, 2522.445, 2522.448, 2522.450, 2522.455, 2522.460, 2522.465, 2522.470, and 2522.475.

**§ 2522.415 How does the grant selection process work?**

The selection process includes:

(a) Determining whether your proposal complies with the application requirements, such as deadlines and eligibility requirements;

(b) Applying the basic selection criteria to assess the quality of your proposal;

(c) Applying any applicable priorities or preferences, as stated in these regulations and in the applicable Notice of Funding Availability; and

(d) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's national AmeriCorps portfolio.

**§ 2522.420 What basic criteria does the Corporation use in making funding decisions?**

In evaluating your application for funding, the Corporation will assess:

(a) Your program design;

(b) Your organizational capability;

and

(c) Your program's cost-effectiveness and budget adequacy.

**§ 2522.425 What does the Corporation consider in assessing Program Design?**

In determining the quality of your proposal's program design, the Corporation considers your rationale and approach for the proposed program, member outputs and outcomes, and community outputs and outcomes.

(a) *Rationale and approach.* In evaluating your rationale and approach, the Corporation considers the following criteria:

(1) Whether your proposal describes and adequately documents a compelling need within the target community, including a description of how you identified the need;

(2) Whether your proposal includes well-designed activities that address the compelling need, with ambitious performance measures, and a plan or system for continuous program self-assessment and improvement;

(3) Whether your proposal describes well-defined roles for participants that are aligned with the identified needs and that lead to measurable outputs and outcomes; and

(4) The extent to which your proposed program or project:

(i) Effectively involves the target community in planning and implementation;

(ii) Builds on (without duplicating), or reflects collaboration with, other national and community service programs supported by the Corporation; and

(iii) Is designed to be replicated.

(b) *Member outputs and outcomes.* In evaluating how your proposal addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Includes effective and feasible plans for, or evidence of, recruiting, managing, and rewarding diverse members, including those from the target community, and demonstrating member satisfaction;

(2) If you are a current grantee, has succeeded in meeting reasonable member enrollment and retention targets in prior grant periods, as determined by the Corporation;

(3) Includes effective and feasible plans for, or evidence of, developing, training, and supervising members;

(4) Demonstrates well-designed training or service activities that promote and sustain post-service, an ethic of service and civic responsibility, including structured opportunities for

members to reflect on and learn from their service; and

(5) If you are a current grantee, has met well-defined, performance measures regarding AmeriCorps members, including any applicable national performance measures, and including outputs and outcomes.

(c) *Community outputs and outcomes.* In evaluating whether your proposal adequately addresses community outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Is successful in meeting targeted, compelling community needs, or if you are a current grantee, the extent to which your program has met its well-defined, community-based performance measures, including any applicable national performance measures, and including outputs and outcomes, in previous grant cycles, and is continually expanding and increasing its reach and impact in the community;

(2) Has an impact in the community that is sustainable beyond the presence of Federal support (For example, if one of your projects is to revitalize a local park, you would meet this criterion by showing that after you have completed your revitalization project, the community will continue its upkeep on its own);

(3) Generates and supports volunteers to expand the reach of your program in the community; and

(4) Enhances capacity-building of other organizations and institutions important to the community, such as schools, homeland security organizations, neighborhood watch organizations, civic associations, and community organizations, including faith-based organizations.

**§ 2522.430 How does the Corporation assess my organizational capability?**

(a) In evaluating your organizational capability, the Corporation considers the following:

(1) The extent to which your organization has a sound structure including:

- (i) The ability to provide sound programmatic and fiscal oversight;
- (ii) Well-defined roles for your board of directors, administrators, and staff;
- (iii) A well-designed plan or systems for organizational (as opposed to program) self-assessment and continuous improvement; and
- (iv) The ability to provide or secure effective technical assistance.

(2) Whether your organization has a sound record of accomplishment as an organization, including the extent to which you:

(i) Generate and support diverse volunteers who increase your organization's capacity;

(ii) Demonstrate leadership within the organization and the community served; and

(iii) If you are an existing grantee, you have secured the matching resources as reflected in your prior grant awards;

(3) The extent to which you are securing community support that recurs, expands in scope, or increases in amount, and is more diverse, as evidenced by—

(i) Collaborations that increase the quality and reach of service and include well-defined roles for faith-based and other community organizations;

(ii) Local financial and in-kind contributions; and

(iii) Supporters who represent a wide range of community stakeholders.

(b) In applying the criteria in paragraph (a) of this section to each proposal, the Corporation may take into account the following circumstances of individual organizations:

(1) The age of your organization and its rate of growth; and

(2) Whether your organization serves a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of philanthropic and corporate resources.

**§ 2522.435 How does the Corporation evaluate the cost-effectiveness and budget adequacy of my program?**

(a) In evaluating the cost-effectiveness and budget adequacy of your proposed program, the Corporation considers the following:

(1) Whether your program is cost-effective based on:

(i) Your program's proposed Corporation cost per MSY, as defined in § 2522.485; and

(ii) Other indicators of cost-effectiveness, such as:

(A) The extent to which your program demonstrates diverse non-Federal resources for program implementation and sustainability;

(B) If you are a current grantee, the extent to which you are increasing your share of costs to meet or exceed program goals; or

(C) If you are a current grantee, the extent to which you are proposing deeper impact or broader reach without a commensurate increase in Federal costs; and

(2) Whether your budget is adequate to support your program design.

(b) In applying the cost-effectiveness criteria in paragraph (a) of this section, the Corporation will take into account the following circumstances of individual programs:

(1) Program age, or the extent to which your program brings on new sites;

(2) Whether your program or project is located in a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate or philanthropic resources;

(3) Whether your program or project is located in a high-cost, economically distressed community, measured by applying appropriate Federal and State data; and

(4) Whether the reasonable and necessary costs of your program or project are higher because they are associated with engaging or serving difficult-to-reach populations, or achieving greater program impact as evidenced through performance measures and program evaluation.

(c) The indicators in paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section do not apply to Education Award Program applicants.

**§ 2522.440 What weight does the Corporation give to each category of the basic criteria?**

In evaluating applications, the Corporation assigns the following weights for each category:

Category	Percentage
Program design .....	50
Organizational capability .....	25
Cost-effectiveness and budget adequacy .....	25

**§ 2522.445 What weights does the Corporation give to the subcategories under Program Design?**

The Corporation gives the following weights to the subcategories under Program Design:

Program design sub-category	Percentage
Rationale and approach .....	10
Member outputs and outcomes	20
Community outputs and outcomes .....	20

**§ 2522.448 What weights does the Corporation give to the subcategories under Cost Effectiveness and Budget Adequacy?**

Cost-effectiveness and budget adequacy sub-category	Percentage
Cost-effectiveness .....	15
Adequacy of budget .....	10



**§ 2522.450 What types of programs or program models may receive special consideration in the selection process?**

Following the scoring of proposals under § 2522.440 of this part, the Corporation will seek to ensure that its portfolio of approved programs includes a meaningful representation of proposals that address one or more of the following priorities:

- (a) *Program models*: (1) Programs operated by community organizations, including faith-based organizations, or programs that support the efforts of community organizations, including faith-based organizations, to solve local problems;
- (2) Lower-cost professional corps programs, as defined in paragraph (a)(3) of § 2522.110 of this chapter.

- (b) *Program activities*: (1) Programs that serve or involve children and youth, including mentoring of disadvantaged youth and children of prisoners;
- (2) Programs that address educational needs, including those that carry out literacy and tutoring activities generally, and those that focus on reading for children in the third grade or younger;
- (3) Programs that focus on homeland security activities that support and promote public safety, public health, and preparedness for any emergency, natural or man-made (this includes programs that help to plan, equip, train, and practice the response capabilities of many different response units ready to mobilize without warning for any emergency);

- (4) Programs that address issues relating to the environment;
- (5) Programs that support independent living for seniors or individuals with disabilities;
- (6) Programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities;
- (7) Programs that foster opportunities for Americans born in the post-World War II baby boom to serve and volunteer in their communities; and
- (8) Programs that involve community-development by finding and using local resources, and the capacities, skills, and assets of lower-income people and their community, to rejuvenate their local economy, strengthen public and private investments in the community, and help rebuild civil society.

- (c) *Programs supporting distressed communities*: Programs or projects that will be conducted in:
- (1) A community designated as an empowerment zone or redevelopment area, targeted for special economic incentives, or otherwise identifiable as

having high concentrations of low-income people;

- (2) An area that is environmentally distressed, as demonstrated by Federal and State data;
- (3) An area adversely affected by Federal actions related to managing Federal lands that result in significant regional job losses and economic dislocation;
- (4) An area adversely affected by reductions in defense spending or the closure or realignment of military installation;
- (5) An area that has an unemployment rate greater than the national average unemployment for the most recent 12 months for which State or Federal data are available;
- (6) A rural community, as demonstrated by Federal and State data; or
- (7) A severely economically distressed community, as demonstrated by Federal and State data.

- (d) *Other programs*: Programs that meet any additional priorities as the Corporation determines and disseminates in advance of the selection process.

**§ 2522.455 How do I find out about additional priorities governing the selection process?**

The Corporation posts discretionary funding opportunities addressing the Corporation's selection preferences and additional requirements on our website at [www.nationalservice.gov](http://www.nationalservice.gov) and at [www.grants.gov](http://www.grants.gov) in advance of grant competitions

**§ 2522.460 To what extent may the Corporation or a State commission consider priorities other than those stated in these regulations or the Notice of Funding Availability?**

- (a) The Corporation may give special consideration to a national service program submitted by a State commission that does not meet one of the Corporation's priorities if the State commission adequately explains why the State is not able to carry out a program that meets one of the Corporation's priorities, and why the program meets one of the State's priorities.
- (b) A State may apply priorities different than those of the Corporation in selecting its formula programs.

**§ 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?**

- (a) If you are a State commission applying for State competitive funding, you must prioritize the proposals you submit in rank order based on their

relative quality and according to the following table:

If you submit this number of state competitive proposals to the corporation	Then you must rank this number of proposals
1 to 12 .....	At least top 5.
13 to 24 .....	At least top 10.
25 or more .....	At least top 15.

(b) While the rankings you provide will not be determinative in the grant selection process, and the Corporation will not be bound by them, we will consider them in our selection process.

**§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?**

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs, and projects in rural, high poverty, and economically distressed areas.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following for purposes of clarifying or verifying information in a proposal, including conducting due diligence to ensure an applicant's ability to manage Federal funds:

- (1) For an applicant that has previously received a Corporation grant, any information or records the applicant submitted to the Corporation, or that the Corporation has in its system of records, in connection with its previous grant (e.g. progress reports, site visit reports, financial status reports, audits, HHS Account Payment Data Reports, Federal Cash Transaction Reports, timeliness of past reporting, etc.);
- (2) Program evaluations;
- (3) Member-related information from the Corporation's systems;
- (4) Other Corporation internal information, including information from the Office of Inspector General, administrative standards for State commissions, and reports on program training and technical assistance;
- (5) IRS Tax Form 990;
- (6) An applicant organization's annual report;
- (7) Information relating to the applicant's financial management from Corporation records;
- (8) Member satisfaction indicators;
- (9) Publicly available information including:

- (i) Socio-economic and demographic data, such as poverty rate, unemployment rate, labor force

participation, and median household income;

(ii) Information on where an applicant and its activities fall on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(iii) Information on the nonprofit and philanthropic community, such as charitable giving per capita;

(iv) Information from an applicant organization's website; and

(v) U.S. Department of Education data on Federal Work Study and Community Service; and

(10) Other information, following notice in the relevant Notice of Funding Availability, of the specific information and the Corporation's intention to be able to consider that information in the review process.

(c) Before approving a program grant to a State commission, the Corporation will consider a State commission's capacity to manage and monitor grants.

**§ 2522.475 To what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?**

You must ensure that the selection criteria you use include the following criteria:

(a) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(b) The innovative aspects of the national service program, and the feasibility of replicating the program.

(c) The sustainability of the national service program.

(d) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(e) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(f) The extent to which projects would be conducted in one of the areas listed in § 2522.450(c)(1) through (5) of this subpart.

(g) In the case of applicants other than States, the extent to which the application is consistent with the application of the State in which the projects would be conducted.

(h) Such other criteria as the Corporation considers to be appropriate, following appropriate notice.

■ 6. Add new § 2522.485 to read as follows:

**§ 2522.485 How do I calculate my program's budgeted Corporation cost per member service year (MSY)?**

If you are an AmeriCorps national and community service program, you calculate your Corporation cost per MSY by dividing the Corporation's share of budgeted grant costs by the number of member service years you are awarded in your grant. You do not include child-care or the cost of the education award a member may earn through serving with your program.

**§§ 2522.540, 2522.550, and 2522.560 [Redesignated as §§ 2522.800, 2522.810, and 2522.820]**

■ 7. Amend subpart E of part 2522 as follows:

a. By redesignating § 2522.540, § 2522.550, and § 2522.560 as § 2522.800, § 2522.810, and § 2522.820 respectively;

b. By revising §§ 2522.500, 2522.510, 2522.520, and 2522.530;

c. By adding §§ 2522.540, 2522.550, 2522.560, 2522.570, 2522.580, 2522.590, 2522.600, 2522.610, 2522.620, 2522.630, 2522.640, 2522.650, 2522.700, 2522.710, 2522.720, 2522.730, and 2522.740; and

d. By adding undesignated center headings preceding §§ 2522.550 and 2522.700.

The added and revised text reads as follows:

**§ 2522.500 What is the purpose of this subpart?**

(a) This subpart sets forth the minimum performance measures and evaluation requirements that you as a Corporation applicant or grantee must follow.

(b) The performance measures that you, as an applicant, propose when you apply will be considered in the review process and may affect whether the Corporation selects you to receive a grant. Your performance related to your approved measures will influence whether you continue to receive funding.

(c) Performance measures and evaluations are designed to strengthen your AmeriCorps program and foster continuous improvement, and help identify best practices and models that merit replication, as well as programmatic weaknesses that need attention.

**§ 2522.510 To whom does this subpart apply?**

This subpart applies to you if you are a Corporation grantee administering an AmeriCorps grant, including an Education Award Program grant, or if you are applying to receive AmeriCorps funding from the Corporation.

**§ 2522.520 What special terms are used in this subpart?**

The following definitions apply to terms used in this subpart of the regulations:

(a) *Approved application* means the application approved by the Corporation or, for formula programs, by a State commission.

(b) *Community beneficiaries* refers to persons who receive services or benefits from a program, but not to AmeriCorps members or to staff of the organization operating the program.

(c) *Outputs* are the amount or units of service that members or volunteers have completed, or the number of community beneficiaries the program has served. Outputs do not provide information on benefits or other changes in communities or in the lives of members or community beneficiaries. Examples of outputs could include the number of people a program tutors, counsels, houses, or feeds.

(d) *Intermediate-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members, but is not necessarily a lasting benefit for them. They are observable and measurable indications of whether or not a program is making progress and are logically connected to end outcomes. An example would be the number and percentage of students who report reading more books as a result of their participation in a tutoring program.

(e) *Internal evaluation* means an evaluation that a grantee performs in-house without the use of an independent external evaluator.

(f) *End-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome could be the percent and number of students who have improved their reading scores to grade-level, or other specific measures of academic achievement.

(g) *Grantee* includes subgrantees, programs, and projects.

(h) *National performance measures* are performance measures that the Corporation develops.

(i) *You* refers to a grantee or applicant organization.

**§ 2522.530 May I use the Corporation's program grant funds for performance measurement and evaluation?**

If performance measurement and evaluation costs were approved as part of your grant, you may use your

program grant funds to support them, consistent with the level of approved costs for such activities in your grant award.

**§ 2522.540 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?**

No, the costs of performance measurement and evaluation do not count towards the statutory five percent cap on administrative costs in the grant, as provided in § 2540.110 of this chapter.

**Performance Measures: Requirements and Procedures**

**§ 2522.550 What basic requirements must I follow in measuring performance under my grant?**

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measure and evaluation requirements. In addition, you must:

(a) Establish ambitious performance measures in consultation with the Corporation, or the State commission, as appropriate, following §§ 2422.560 through 2422.660 of this subpart;

(b) Ensure that any program under your oversight collects and organizes performance data on an ongoing basis, at least annually;

(c) Ensure that any program under your oversight tracks progress toward meeting your performance measures;

(d) Ensure that any program under your oversight corrects performance deficiencies promptly; and

(e) Accurately and fairly present the results in reports to the Corporation.

**§ 2522.560 What are performance measures and performance measurement?**

(a) Performance measures are measurable indicators of a program's performance as it relates to member service activities.

(b) Performance measurement is the process of regularly measuring the services provided by your program and the effect your program has in communities or in the lives of members or community beneficiaries.

(c) The main purpose of performance measurement is to strengthen your AmeriCorps program and foster continuous improvement and to identify best practices and models that merit replication. Performance measurement will also help identify programmatic weaknesses that need attention.

**§ 2522.570 What information on performance measures must my grant application include?**

You must submit all of the following as part of your application for each program:

(a) Proposed performance measures, as described in § 2522.580 and § 2522.590 of this part.

(b) Estimated performance data for the program years for which you submit your application; and

(c) Actual performance data, where available, as follows:

(i) For continuation programs, performance data over the course of the grant to date; and

(ii) For recompeting programs, performance data for the preceding three-year grant cycle.

**§ 2522.580 What performance measures am I required to submit to the Corporation?**

(a) When applying for funds, you must submit, at a minimum, the following performance measures:

(1) One set of aligned performance measures (one output, one intermediate-outcome, and one end-outcome) that capture the results of your program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity; and

(2) Any national performance measures the Corporation may require, as specified in paragraph (b) of § 2522.590.

(b) For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students that participated in a tutoring program;

(2) Intermediate-Outcome: Percent of students reading more books; and

(3) End-Outcome: Number and percent of students who have improved their reading score to grade level.

(c) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past. Any performance measures you submit beyond what is required in paragraph (a)(1) of this section may or may not be aligned sets of measures.

**§ 2522.590 Who develops my performance measures?**

(a) You are responsible for developing your program-specific performance measures through your own internal process.

(b) In addition, the Corporation may, in consultation with grantees, establish

performance measures that will apply to all Corporation-sponsored programs, which you will be responsible for collecting and meeting.

**§ 2522.600 Who approves my performance measures?**

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all non-formula programs. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of your grant award.

(b) If you are a program submitting an application under the State formula category, the applicable State commission is responsible for reviewing and approving your performance measures. The Corporation will not separately approve these measures.

**§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?**

(a) Except as provided in paragraph (b) of this section, State commissions are responsible for making the final determination of performance measures for State formula programs, while the Corporation makes the final determination for all other programs.

(b) The Corporation may, through the State commission, require that formula programs meet certain national performance measures above and beyond what the State commission has individually negotiated with its formula grantees.

(c) While State commissions must hold their sub-grantees responsible for their performance measures, a State commission, as a grantee, is responsible to the Corporation for its formula programs' performance measures.

**§ 2522.620 How do I report my performance measures to the Corporation?**

The Corporation sets specific reporting requirements, including frequency and deadlines, for performance measures in the grant award.

(a) In general, you are required to report on the actual results that occurred when implementing the grant and to regularly measure your program's performance.

(b) Your report must include the results on the performance measures approved as part of your grant award.

(c) At a minimum, you are required to report on outputs at the end of year one; outputs and intermediate-outcomes at the end of year two; and outputs, intermediate-outcomes and end-outcomes at the end of year three. We encourage you to exceed these

minimum requirements and report results earlier.

**§ 2522.630 What must I do if I am not able to meet my performance measures?**

If you are not on track to meet your performance measures, you must develop and submit to the Corporation, or the State commission for formula programs, a corrective action plan, consistent with paragraph (a) of this section, or submit a request to the Corporation, or the State commission for formula programs, consistent with paragraph (b) of this section, to amend your requirements under the circumstances described in § 2522.640 of this subpart.

(a) Your corrective action plan must be in writing and include all of the following:

- (1) The factors impacting your performance goals;
- (2) The strategy you are using and corrective action you are taking to get back on track toward your established performance measures; and
- (3) The timeframe in which you plan to achieve getting back on track with your performance measures.

(b) A request to amend your performance measures must include all of the following:

- (1) Why you are not on track to meet your performance requirements;
- (2) How you have been tracking performance measures;
- (3) Evidence of the corrective action you have taken;
- (4) Any new proposed performance measures or targets; and
- (5) Your plan to ensure that you meet any new measures.

(c) You must submit your plan under paragraph (a) of this section, or your request under paragraph (b) of this section, within 30 days of determining that you are not on track to meeting your performance measures.

(d) If you are a formula program, the State commission that approves the plan under paragraph (a) of this section or the request to amend your performance measures under paragraph (b) of this section, must forward an information copy to the Corporation's AmeriCorps program office within 15 days of approving the plan or the request.

**§ 2522.640 Under what circumstances may I change my performance measures?**

(a) You may change your performance measures only if the Corporation or, for formula programs, the State commission, approves your request to do so based on your need to:

- (1) Adjust your performance measure or target based on experience so that your program's goals are more realistic and manageable;

(2) Replace a measure related to one issue area with one related to a different issue area that is more aligned with your program service activity. For example, you may need to replace an objective related to health with one related to the environment;

(3) Redefine the service that individuals perform under the grant. For example, you may need to define your service as tutoring adults in English, as opposed to operating an after-school program for third-graders;

(4) Eliminate an activity because you have been unable to secure necessary matching funding; or

(5) Replace one measure with another. For example, you may decide that you want to replace one measure of literacy tutoring (increased attendance at school) with another (percentage of students who are promoted to the next grade level).

(b) [Reserved].

**§ 2522.650 What happens if I fail to meet the performance measures included in my grant?**

(a) If you are significantly under-performing based on the performance measures approved in your grant, or fail to collect appropriate data to allow performance measurement, the Corporation, or the State commission for formula grantees, may specify a period of correction, after consulting with you. As a grantee, you must report results at the end of the period of correction. At that point, if you continue to under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

- (1) Reduce the amount of your grant;
- (2) Suspend or terminate your grant;
- (3) Use this information to assess any application from your organization for a new AmeriCorps grant or a new grant under another program administered by the Corporation;
- (4) Amend the terms of any Corporation grants to your organization; or
- (5) Take other actions that the Corporation deems appropriate.

(b) If you are a State commission whose formula program(s) is significantly under-performing or failing to collect appropriate data to allow performance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

**Evaluating Programs: Requirements and Procedures**

**§ 2522.700 How does evaluation differ from performance measurement?**

(a) Evaluation is a more in-depth, rigorous effort to measure the impact of programs. While performance measurement and evaluation both include systematic data collection and measurement of progress, evaluation uses scientifically-based research methods to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. Unlike performance measures, evaluations estimate the impacts of programs by comparing the outcomes for individuals receiving a service or participating in a program to the outcomes for similar individuals not receiving a service or not participating in a program. For example, an evaluation of a literacy program may compare the reading ability of students in a program over time to a similar group of students not participating in a program.

(b) Performance measurement is the process of systematically and regularly collecting and monitoring data related to the direction of observed changes in communities, participants (members), or end beneficiaries receiving your program's services. It is intended to provide an indication of your program's operations and performance. In contrast to evaluation, it is not intended to establish a causal relationship between your program and a desired (or undesired) program outcome. For example, a performance measure for a literacy program may include the percentage of students receiving services from your program who increase their reading ability from "below grade level" to "at or above grade level". This measure indicates something good is happening to your program's service beneficiaries, but it does not indicate that the change can be wholly attributed to your program's services.

**§ 2522.710 What are my evaluation requirements?**

(a) If you are a State commission, you must establish and enforce evaluation requirements for your State formula subgrantees, as you deem appropriate.

(b) If you are a State competitive or direct Corporation AmeriCorps grantee (other than an Education Award Program grantee), and your average annual Corporation program grant is \$500,000 or more, you must arrange for an independent evaluation of your program, and you must submit the

evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation AmeriCorps grantee whose average annual Corporation program grant is less than \$500,000, or an Education Award Program grantee, you must conduct an internal evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(d) The Corporation may, in its discretion, supersede these requirements with an alternative evaluation approach, including one conducted by the Corporation at the national level.

(e) Grantees must cooperate fully with all Corporation evaluation activities.

**§ 2522.720 How many years must my evaluation cover?**

(a) If you are a State formula grantee, you must conduct an evaluation, as your State commission requires.

(b) If you are a State competitive or direct Corporation grantee, your evaluation must cover a minimum of one year but may cover longer periods.

**§ 2522.730 How and when do I submit my evaluation to the Corporation?**

(a) If you are an existing grantee recompeting for AmeriCorps funds for the first time, you must submit a summary of your evaluation efforts or

plan to date, and a copy of any evaluation that has been completed, as part of your application for funding.

(b) If you again compete for AmeriCorps funding after a second three-year grant cycle, you must submit the completed evaluation with your application for funding.

**§ 2522.740 How will the Corporation use my evaluation?**

The Corporation will consider the evaluation you submit with your application as follows:

(a) If you do not include with your application for AmeriCorps funding a summary of the evaluation, or the evaluation itself, as applicable, under § 2522.730, the Corporation reserves the right to not consider your application.

(b) If you do submit an evaluation with your application, the Corporation will consider the results of your evaluation in assessing the quality and outcomes of your program.

■ 8. Add subpart F to part 2522 consisting of § 2522.900 through § 2522.950, to read as follows:

**Subpart F—Program Management Requirements for Grantees**

Sec.

2522.900 What definitions apply to this subpart?

2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

2522.920 Are there any exceptions to the qualifications requirements?

2522.930 What is an appropriate proficiency test?

2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?

**Subpart F—Program Management Requirements for Grantees**

**§ 2522.900 What definitions apply to this subpart?**

*Tutor* is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group sessions and activities that build on the academic strengths of students in kindergarten through 12th grade, and target their academic needs. A tutor does not include someone engaged in other academic support activities, such as mentoring and after-school program support, whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

**§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?**

If the tutor is:	Then the tutor must meet the following qualifications:
(a) Is considered to be an employee of the Local Education Agency or school, as determined by State law. (b) Is not considered to be an employee of the Local Education Agency or school, as determined by State law.	Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58 (1)(i) High School diploma or its equivalent, or a higher degree OR (ii) Proficiency test, as described in § 2522.930 of this subpart; and (2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart.

**§ 2522.920 Are there any exceptions to the qualifications requirements?**

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a K–12 student tutoring younger children in the school or after school as part of a structured, school-managed cross-grade tutoring program.

**§ 2522.930 What is an appropriate proficiency test?**

(a) If a member serving as a tutor does not have a high-school diploma or its equivalent, or a higher degree, the member must pass a proficiency test that the program has determined effective in ensuring that members serving as tutors have the necessary skills to achieve program goals.

(b) The program must maintain in the member file of each member who takes the test documentation on the proficiency test selected and the results.

**§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?**

A program in which members engage in tutoring for children must:

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart;

(b) Identify the strategies or tools it will use to assess student progress and measure student outcomes;

(c) Certify that the tutoring curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the

instructional program of the local educational agency or with State academic content standards;

(d) Include appropriate member supervision by individuals with expertise in tutoring; and

(e) Provide specialized high-quality and research-based, member pre-service and in-service training consistent with the activities the member will perform.

**§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?**

(a) If your program does not involve tutoring as defined in § 2522.900 of this subpart, the Corporation will not impose the requirements in § 2522.910 through § 2522.940 of this subpart on your program.

(b) At a minimum, you must articulate in your application how you will recruit, train, and supervise members to ensure that they have the qualifications and skills necessary to provide the service activities in which they will be engaged.

#### **PART 2540—GENERAL ADMINISTRATIVE PROVISIONS**

- 1. The authority citation for part 2540 is revised to read as follows:

**Authority:** EO 13331, 69 FR 9911.

- 2. Amend § 2540.100 by redesignating paragraphs (f)(2) through (f)(5) as (f)(3) through (f)(6) respectively, and adding a new paragraph (f)(2) to read as follows:

##### **§ 2540.100 What restrictions govern the use of Corporation assistance?**

\* \* \* \* \*

(f) \* \* \*

(2) An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.

\* \* \* \* \*

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

- 1. Revise the heading of part 2550 to read as set forth above.
- 2. The authority citation for part 2550 is revised to read as follows:

**Authority:** 42 U.S.C. 12638.

- 3. Amend § 2550.10 as follows:

- a. By revising paragraph (b);
- b. By revising paragraph (c);
- c. By revising the last sentence of paragraph (d).

The revisions read as follows:

##### **§ 2550.10 What is the purpose of this part?**

\* \* \* \* \*

(b) To be eligible to apply for program funding, or approved national service positions, each State must establish a State commission on national and community service to administer the State program grant making process and to develop a State plan. The Corporation may, in some instances, approve an alternative administrative entity (AAE).

(c) The Corporation will distribute grants of between \$125,000 and \$750,000 to States to cover the Federal share of operating the State commissions or AAEs.

(d) \* \* \* This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information for State commissions and AAEs.

##### **§ 2550.20 [Amended]**

- 4. Amend § 2550.20 by removing paragraph (o).
- 5. Amend § 2550.30 by revising the section heading to read as set forth below, removing paragraphs (c) and (d), and redesignating paragraph (e) as paragraph (c).

##### **§ 2550.30 How does a State decide whether to establish a State commission or an alternative administrative entity?**

\* \* \* \* \*

##### **§ 2550.40 [Amended]**

- 6. Amend § 2550.40 by removing paragraph (c).

##### **§ 2550.70 [Removed and reserved]**

- 7. Remove and reserve § 2550.70.
- 8. Amend § 2550.80 as follows:
  - a. Revise the first two sentences of the introductory text; and
  - b. Revise paragraph (j) to read as follows:

##### **§ 2550.80 What are the duties of the State entities?**

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively referred to as State entities. \* \* \*

\* \* \* \* \*

(j) *Activity ineligible for assistance.* A State commission or AAE may not directly carry out any national service program that receives financial assistance under section 121 of the NCSA or title II of the DVSA.

\* \* \* \* \*

Dated: June 28, 2005.

**David Eisner,**

*Chief Executive Officer.*

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