Corporation for
NATIONAL &
COMMUNITY
SERVICE

OFFICE OF INSPECTOR GENERAL

July 25, 2003

Dr. Leslie Lenkowsky
Chief Executive Officer
Corporation for National and Community Service
1201 New York Avenue, NW.
Washington, DC 20525

Dear Dr. ~~Lenkowsky~~: Les

Thank you for your response to the Office of Inspector General's report on the Corporation's management of the National Service Trust and issues related to the Anti-Deficiency Act. Your response, in its entirety, will be included in the report.

As you know, the report's findings are based on information provided to us by Corporation officials. Your response highlighted the Office of Inspector General's use of a document depicting the Corporation's financial status, dated May 8, 2003. This document was provided to us by Mr. William Anderson, the Corporation's Deputy Chief Financial Officer. It was the most recent information on the Corporation's Trust balances that was made available to the Office of Inspector General as of the date of the report. Throughout the report, the Office of Inspector General relied on information it could obtain from the Corporation.

We look forward to working with the Corporation to implement the recommendations contained in this report.

Sincerely,

J. Russell George

J. Russell George
Inspector General

Corporation for
NATIONAL & COMMUNITY SERVICE

July 25, 2003

The Honorable J. Russell George
Inspector General
Corporation for National and Community Service
1201 New York Avenue, NW, Suite 830
Washington, D.C. 20525

Dear ~~Mr. George~~ Russell:

Thank you for the opportunity to comment on OIG Report 03-007, dated July 24, 2003, concerning the National Service Trust. Because we received a copy of this report just yesterday, our attached comments, which have been prepared by Corporation staff, are by necessity of a preliminary nature. As we received this report in its final form, we sincerely regret that we were unable to provide you with our comments on your core analysis as well as factual corrections prior to the report's release. We respectfully request an opportunity to amend or supplement these comments as appropriate.

Sincerely,

Leslie Lenkowsky
Chief Executive Officer

Attachment

Preliminary Response by Corporation for National and Community Service

While we disagree with your core analysis relating to the Trust deficiency we recognize that there is much to be done to improve our management of the Trust and we will carefully consider the report's recommendations.

As the report makes clear, there have been varying opinions on the appropriate calculation of liabilities associated with the National Service Trust. We agree that the Strengthen AmeriCorps Program Act, signed by President Bush on July 3, 2003, effectively resolves those questions for education awards approved in fiscal year 2003 and moving forward.

What remains is resolution of prior-year obligations in the National Service Trust. It is on that point that we strongly disagree with the assumptions used in sections VI and VII of the report. The analysis in sections VI and VII relies solely on financial information presented in a draft spreadsheet prepared by the Corporation's Office of the Chief Financial Officer on May 8, 2003. The draft spreadsheet was prepared before the May 30, 2003 opinion issued by OMB's General Counsel and before enactment of the Strengthen AmeriCorps Program Act on July 3, 2003. Both the OMB May 30 opinion and the Strengthen AmeriCorps Program Act significantly changed the legal framework for determining the amount of obligations and balances in the Trust. The OMB May 30 opinion supported a less conservative estimate for education awards liabilities than the OMB May 2 opinion. The Strengthen AmeriCorps Program Act, which covers any education awards approved in fiscal year 2003, authorizes estimates using the same variables (albeit with more conservative assumptions) as were employed by the Corporation's methodology in previous years.

Because the draft spreadsheet dated May 8, 2003, was prepared while the legal landscape was still unfolding, it significantly over-inflates the deficiency amount as well as significantly over-extends the deficiency period. What is perhaps most troubling is the fact that the text of the report itself does not disclose that the spreadsheet is marked "DRAFT" and therefore does not, in our view, fairly describe the basis for the report's conclusions about the Trust deficiency.

In addition, the analysis in sections VI and VII seems to imply that the deficiency amount included obligations incurred between the time the Corporation instituted a moratorium on enrollments in November 2002 and enactment of the Strengthen AmeriCorps Program Act on July 3, 2003. We disagree. The report fails to recognize that the Corporation's corrective actions limited the amount of the deficiency and that any obligations made after the moratorium was lifted had no effect whatsoever on the amount of the Trust deficiency. Based on an opinion from OMB's General Counsel dated March 6, 2003 (copy attached), we properly charged any education award obligations incurred after the February 20, 2003 enactment of the fiscal year 2003 appropriation to the 2003 Trust appropriation. Moreover, section 2(b)(4) of the Strengthen AmeriCorps Program Act – while enacted on July 3, 2003 — specifically applies the recording provisions therein to positions approved "during fiscal year 2003 (before or after the date of enactment of this Act)" as well as in future fiscal years. After identifying the shortfall in November 2002, the Corporation instituted a four-month moratorium on enrollments and approved new positions only after Congress appropriated $100 million for fiscal year 2003 and only applying the most conservative methodology (GAO). Thus, the Corporation's actions since the enrollment moratorium were entirely remedial in nature.

We are in the final stages of completing our determination of the deficiency amount and preparing the appropriate reports under the Antideficiency Act. The analysis was dependent upon determining the appropriate recording methodology; this was resolved definitively on July 3, 2003. We have been working closely with OMB to implement that methodology. While that determination is not yet complete, our application of what we understand to be the governing law makes clear that the May 8 draft spreadsheet is obsolete and should not be relied upon in calculating the amount of, or in assessing responsibility for, the Trust deficiency.

We have also identified the following details that, in our view, are incorrect or incomplete.

Page 1, first paragraph:
Inasmuch as there is consensus now that the obligational event for education awards is the approval of positions, references to "enrollment" should be changed to "approval".

Page 5, second full paragraph:
The Service Award Liability Model does not perform the functions described.

Page 6, first two lines:
Dr. Lenkowsky's positive response to the July 11, 2002 email was directed principally to the reduction in per member costs.

Page 6, first full paragraph:
Dr. Lenkowsky did take action in response to the August 28, 2002 email, specifically by following up on the status of the pending nomination to fill the vacant Chief Financial Officer position.

Page 7, second paragraph:
The $100 million appropriation for the Trust was part of the omnibus fiscal year 2003 appropriation and did not constitute a "supplemental" appropriation.

Page 15, first paragraph:
Deborah Jospin's tenure as Director of AmeriCorps ended on January 19, 2001 and did not overlap with her successor.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 6, 2003

GENERAL COUNSEL

MEMORANDUM FOR THE FILE

FROM: Philip J. Perry

SUBJECT: Corporation for National and Community Service FY03 Appropriations Issue

The Administration learned last year that the Corporation for National and Community Service had, during the period 1993 through 2002, improperly accounted for the obligations it had incurred to pay educational expenses of the volunteers in its AmeriCorps program. That improper accounting, in combination with a Congressional rescission, produced a $64 million deficiency in the National Service Trust account. Although information regarding these accounting flaws and the deficiency was shared with Congress prior to the recent enactment of the Omnibus Appropriations Act for FY03, the CNCS appropriation for FY03 transferred $100 million to the trust fund but did not explicitly address the $64 million deficiency. The question now is whether that $100 million should be utilized to address the $64 million deficiency or whether additional Congressional action is required to cure the deficiency.

We have reviewed the relevant appropriation language in Public Law 108-7, the Omnibus Appropriations Act for FY03. While other readings might be plausible, we conclude that the most reasonable interpretation of the appropriations language is that the full $100 million appropriated for the trust fund is available for obligations incurred in FY03 and subsequent years, but is *not* available to liquidate the $64 million in obligations incurred in prior fiscal years. While prior CNCS accounting flaws, in combination with a Congressional rescission, did produce a substantial deficiency, that deficiency may not be remedied from this $100 million appropriation. Nor may CNCS return to the improper accounting methodologies it previously employed. Instead, CNCS must seek a deficiency appropriation or other legislative relief to address the prior-year obligations. New legislation providing a deficiency appropriation or other relief will ensure that CNCS is able to pay the educational awards as they come due in future years.

Discussion

The relevant FY03 appropriations language appears under the heading "National and Community Service Programs Operating Expenses (including recission and transfer of funds)." The stated purpose for the funding is "carrying out programs, activities, and initiatives under the National Community Service Act of 1990." The $100,000,000 at issue "shall be transferred to the National Service Trust" and shall "remain available without fiscal year limitation."

In interpreting the FY03 CNCS appropriation, it is important to place this language in the broader context of how Congress provides funding to address a deficiency. When Congress appropriates funds to liquidate a past deficiency, Congress uses language that makes expressly clear that it is making the funds available to cover a prior year's obligations. In other words, Congress makes clear that these funds are not being provided to support current operations. The following are examples of the express language that Congress uses when it appropriate funds to liquidate obligations arising from prior-year activities:

- "For an additional amount, to liquidate obligations previously incurred, $274,147,000." (USDA Forest Service "Wildland Fire Management" account; FY02 Interior Appropriations Act, P.L. 107-63.)
- ". . . up to $6,000,000 may be used to liquidate obligations incurred in previous years . . ." (USDA "Food Safety and Inspection Service" account; FY01 Agriculture Appropriations Act, P.L. 106-387.)
- ". . . not to exceed $26,700,000 shall be available for recording, adjusting, and liquidating obligations for the C-17 aircraft properly chargeable to the fiscal year 1998 and 1999 'Aircraft Procurement, Air Force' account . . ." (§ 8126, FY02 Defense Appropriations Act, P.L. 107-117.)
- ". . . not to exceed $50,000,000 shall be available for recording, adjusting, and liquidating obligations properly chargeable to fiscal year 1997 and 1998 'Missile Procurement, Air Force' accounts . . ." (§ 8127, FY02 Defense Appropriations Act, P.L. 107-117.)
- "[Prior obligations] may be charged to any current appropriation account of the agency available for the same purpose." (31 U.S.C. § 1553(b) -- the "M Account" law.) *

Consistent with these examples of the language that Congress uses to liquidate a past deficiency, the general rule is that an agency may not satisfy its past deficiencies from current appropriations without express statutory authority to do so. *See generally* 71 Comp. Gen. 502 (1992); 55 Comp. Gen. 768, *13 (1976).

In accordance with this rule and the above examples, the best interpretation of the FY03 CNCS appropriation is that the $100 million is available for current activities and is not available to liquidate the $64 million deficiency resulting from obligations incurred in prior fiscal years. In its consideration of the FY03 appropriation, Congress was aware of the past deficiency but did not expressly address it in the FY03 appropriations language. Unlike the above examples of deficiency statutes, the FY03 appropriation

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* The first two examples are deficiency appropriations; the second two are appropriated funds to address obligations arising from prior-year activities; and the final example is an authorization to use current funds to liquidate prior-year obligations.

contains no language making clear that funds are being made available for the purpose of satisfying past obligations. Instead, Congress in the FY03 appropriation used the same language that it had used in the prior appropriation for the trust (i.e., the FY01 appropriation) – an appropriation made well *before* the deficiency had been discovered. In addition, the FY03 appropriation states that the funds are to be used for "Operating Expenses" resulting from "carrying out programs, activities, and initiatives" – which is the standard kind of language that Congress uses when it provides funding for operating expenses of ongoing activities, rather than for the liquidation of past obligations.

The FY03 conference report further reinforces the conclusion that this is the best interpretation of the language. It states that: ***"This funding level provided will support 50,000 new volunteers enrolled in the Trust in fiscal year 2003."*** As a factual matter, it would not be possible for CNCS to hire anywhere near that number of volunteers in FY03 if CNCS had to dedicate 64% of the FY03 appropriation (i.e., $64 million of the $100 million) to liquidating the deficiency from past years rather than to carrying out FY03 activities.

Conclusion

Thus, for the reasons above, the best interpretation of the appropriations language is that these FY03 funds are not available for prior obligations.