

July 24, 2003

The National Service Trust:

**Internal Control Weaknesses
Cause an Anti-Deficiency Act Violation at the
Corporation for National and Community Service**

Office of Inspector General Report 03-007

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
I. THE NATIONAL SERVICE TRUST	2
A. Establishment of the National Service Trust.....	2
B. Early Operations of the Trust	2
C. Trust Surpluses Lead to Reduced Appropriations.....	3
II. PROBLEMS BEGIN TO SURFACE	5
A. Increasing AmeriCorps Enrollment	5
B. Early Warnings Missed by Management	5
C. Enrollment Paused.....	7
III. INTERNAL FAILURES LEAD TO NEW PROCEDURES	7
A. Lack of Internal Controls and Flawed Procedures.....	7
B. Correcting AmeriCorps Funding Level and Membership Procedures.....	8
IV. IMPROPER REPORTING ON OFFICE OF MANAGEMENT AND BUDGET STANDARD FORM 133	8
V. DIVERGING LEGAL OPINIONS.....	9
A. The Corporation and OIG Opinions.....	9
B. OMB's First Opinion of April 1, 2003.....	10
C. The Inspector General's Senate Testimony on April 10, 2003	10
D. GAO's First Opinion of April 10, 2003	11
E. OMB's Second Opinion of May 2, 2003.....	11
F. OMB's Third Opinion of May 30, 2003.....	11
G. GAO's Response of June 6, 2003	11
H. The Strengthen AmeriCorps Act.....	12
VI. ANTI-DEFICIENCY ACT ANALYSIS.....	12
VII. IDENTIFYING THOSE WITH RESPONSIBILITY FOR THE TRUST.....	13
A. Positions with Trust Oversight.....	13
B. Positions Responsible for Trust Operations	14
C. Positions that Impact the Trust.....	15
VIII. OFFICE OF INSPECTOR GENERAL FINDINGS AND RECOMMENDATIONS	16
IX. EXHIBIT LIST.....	19

EXECUTIVE SUMMARY

An investigation by the Office of Inspector General has concluded that the Anti-Deficiency Act¹ was violated by the Corporation for National and Community Service (the Corporation) regarding funding for AmeriCorps members enrolled in the Corporation's National Service Trust.² The Corporation violated the Anti-Deficiency Act by enrolling more AmeriCorps members than could be supported by funds in the Corporation's National Service Trust. The Office of Management and Budget estimated that the violations resulted in a Trust deficiency of \$64 million. According to financial data provided by the Corporation,³ the violation first occurred in the year 2000. The issues leading to the violation were resolved on July 3, 2003, when President George W. Bush signed legislation specifying certain fiduciary responsibilities concerning the Trust.

The investigation determined that the violation was caused by inadequate oversight, flawed membership and financial reporting systems, job responsibilities for key personnel that were either not well-defined or adhered to, and a lack of effective communication among Corporation managers.

The Anti-Deficiency Act forbids a Federal agency from obligating more money than the agency has been authorized to spend by Congress. A key factor in determining whether the Corporation violated the Anti-Deficiency Act hinged on two issues related to the Trust: the first was the question of when an obligation for an education award should be recorded against the Trust. The second issue was what amount should be recorded as an obligation against the Trust. On July 3, 2003, President George W. Bush signed the Strengthen AmeriCorps Program Act, which statutorily resolved these two issues. This legislation clarifies when the Corporation should record a Trust obligation and allows the Corporation to use a model that estimates the amount that should be obligated.

Corporation management has addressed some of the flawed procedures that contributed to the Anti-Deficiency Act violations. This report includes additional recommendations designed to prevent future violations of the law and to protect the fiscal integrity of the Trust.

¹ 31 U.S.C. § 1341 (2003).

² The Corporation appears to have also violated two provisions in its authorizing statute: 42 U.S.C. §§ 12571(c) and 12581(f). Section 12571(c) requires the Corporation to "deposit in the National Service Trust . . . an amount equal to the product of the value of a national service educational award . . . and the total number of approved national service positions to be provided." Section 12581(f) states that the Corporation "may not approve positions as approved national service positions under this subtitle for a fiscal year in excess of the number of such positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year." This report focuses on Anti-Deficiency issues; accordingly, these potential violations of the Corporation's authorizing statute are not addressed in this report.

³ The conclusion that the Corporation violated the Anti-Deficiency Act is predicated on the Corporation's reconstruction of Trust balances on a year-by-year basis. *See* Reconstruction of Trust Balances, prepared by William Anderson, Deputy Chief Financial Officer (May 8, 2003) ([Exhibit 1](#)).

I. THE NATIONAL SERVICE TRUST

A. Establishment of the National Service Trust

The Corporation for National and Community Service was created on September 21, 1993, when President William Clinton signed the National and Community Service Trust Act of 1993.⁴ The Corporation was charged with administering the AmeriCorps, Learn and Serve America, Senior Corps, and other national service programs. The National and Community Service Trust Act of 1993 also established the National Service Trust to fund education awards and to pay the interest that accrues on qualified student loans.⁵

The primary purpose of the National Service Trust is to fund education awards. Modeled on the GI Bill of the 1940's, the education award compensates citizens for national service by investing in their higher education.⁶ To earn the maximum education award of \$4,725, each AmeriCorps member must perform at least 1700 hours of service within a nine to twelve month period.⁷ These education awards can be used to repay qualified student loans, pay the costs of attending a qualified institution of higher education, or cover the expenses incurred in participating in an approved school-to-work program. Education awards are paid directly to members' qualified schools and lenders.

Each fiscal year, the Corporation requests, and Congress appropriates, a designated amount of money to be used solely to fund the Trust. In its fiscal year 2002 budget submission, the Corporation requested no additional appropriations for the Trust. Partly due to this decision, the Corporation was forced to pause AmeriCorps enrollment in November 2002 because the Trust was in danger of lacking adequate funds to pay Trust liabilities. In response to this pause in AmeriCorps enrollment, Senator Christopher S. Bond requested that the Corporation's Office of Inspector General (OIG) investigate and audit the management and oversight of the National Service Trust.⁸

B. Early Operations of the Trust

Congress formed the Corporation based on the structure of a private corporation, with a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, and Board of Directors. Mr. Eli Segal served as the Corporation's first Chief Executive Officer. The primary Corporation employees responsible for implementing Trust operations were Mr. David Spevacek, former Senior Director for Budget and Trust, and Mr. George (Gary) Kowalczyk, former Director of Planning and Program Integration.

⁴ 42 U.S.C. §§ 12501-681 (2003).

⁵ In fiscal year 1998, the Trust also began funding Presidential Scholarships for those who complete approved terms of national service.

⁶ *AmeriCorps Member Handbook* at 15 (Sept. 1997).

⁷ Lesser awards can be earned by successfully completing a shorter term of service.

⁸ See Letter from the Honorable Christopher S. Bond, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, United States Senate, to the Honorable J. Russell George, Inspector General, Corporation for National and Community Service (Nov. 20, 2002) ([Exhibit 2](#)).

During its inception from 1994 to 1995, the Corporation received minimal Federal regulatory guidance regarding Trust operations. In an interview with Mr. Spevacek, he noted that when the Trust was initially created, the Corporation, in consultation with the Office of Management and Budget (OMB), recorded Trust obligations based on amounts outlayed. This method was accepted, implemented and, until recently, continued unchallenged.

The Corporation's initial attempt to estimate AmeriCorps enrollment was hampered by the fact that it could not rely on historical data because the program was in its first year of operations. By the end of 1995, it became evident that actual AmeriCorps enrollment failed to reach the initial estimate, according to Mr. Spevacek.⁹ In addition, the Corporation realized that not all enrollees were successfully completing their terms of service and earning their education awards.¹⁰

Based on his experience during these initial years, Mr. Spevacek developed a series of statistical formulas in 1996. These formulas estimated data such as the number of enrollees who would successfully complete their service, when they would complete their service, and when, after completing their service, they would claim their education award. In addition to estimating the number of AmeriCorps members who would claim their education award, the formulas also estimated the average amount of an education award. These early formulas, which were also used to forecast estimated future funding requirements for the Trust, evolved into the Service Award Liability Model. The model attempted to provide better management of the Trust's funds and more accurate liability data for the Corporation's financial statements.¹¹

C. Trust Surpluses Lead to Reduced Appropriations

As a result of model liability forecasts from 1996 to 1999, coupled with yearly Congressional appropriations and Trust investment earnings, Trust fund surpluses grew at a rapid rate that far exceeded the Trust's projected liabilities. By 2000, the Trust surplus had grown to such a level that Congress rescinded \$81 million from appropriations previously made available for the Trust. In 2001, Congress rescinded \$30 million of additional funds from amounts previously appropriated for the Trust.

During most of 2001, the Corporation lacked a confirmed Chief Executive Officer. Due to the change in Administrations, the position of Chief Executive Officer was vacant from January 20, 2001, when the Honorable Harris Wofford resigned, until October 17, 2001, when he was succeeded by Dr. Leslie Lenkowsky. Former Chief Operating Officer Wendy Zenker filled the vacancy by also serving as the Acting Chief Executive Officer during this time. Ms. Zenker and other members of management realized that the budget was probably going to be reduced based on

⁹ Interview of David Spevacek, former Senior Director for Budget and Trust, Corporation for National and Community Service (Dec. 18, 2002).

¹⁰ AmeriCorps members enrolled in the Trust fall in one of three groups. The first group consists of those members who enroll and begin, but do not complete, their term of service. These members do not earn an education award. The second group consists of those members who enroll, successfully complete their term of service and earn their education award, but never use their benefit within the seven-year period before it expires. The third group is members who enroll, successfully complete their term of service, earn a portion or all of their education award, and use their award.

¹¹ Interview of David Spevacek (Dec. 18, 2002).

discussions with OMB and Congressional staff.¹² In an effort to prevent the public perception that the Corporation was shrinking, Ms. Zenker and Corporation senior staff believed that the Corporation could meet the Administration's budget reduction goals by not requesting additional appropriations for the Trust.¹³ The Service Award Liability Model indicated that the Trust had sufficient funds to cover estimated liabilities.¹⁴ As a result, Corporation senior management requested no appropriations for the Trust in their fiscal year 2002 budget request, stating:

We have calculated the requirements for the Trust and have determined that no new authority is required in fiscal 2002 for the Trust Fund costs associated with new AmeriCorps members. This determination reflects several changes to policies and estimating procedures when compared to prior year Trust Fund requests, including:

- The explicit recognition that future interest earnings in the Trust lower the requirements for new authority in the current year's budget request. We have made this change as a result of the review of the estimating model. In the past, the assumption was that future interest earnings would affect budget authority needs in the out years.
- A program budget that is based on no growth in the number of AmeriCorps members in 2002.
- An assumption that AmeriCorps will remain at 48,000 members beyond 2002.
- There are sufficient balances in the Trust to cover the estimated education award liability associated with the members supported in the fiscal year 2002 program budget.¹⁵

In May 2001, Senators Christopher S. Bond and Barbara A. Mikulski requested that the Corporation's Office of Inspector General review the methodology used by the Corporation in determining that no additional Trust appropriations were necessary for fiscal year 2002.¹⁶ The OIG contracted with the accounting firm KPMG LLP to perform this review, and KPMG found adequate support for the Corporation's decision. However, KPMG noted that Congress would likely need to appropriate approximately \$75 million in fiscal year 2003 to fund additional awards

¹² Interview of Wendy Zenker, Chief Operating Officer, Corporation for National and Community Service (Dec. 20, 2002).

¹³ *Id.*

¹⁴ PricewaterhouseCoopers was engaged to assess and review the Corporation's Service Award Liability Model in 2001. PricewaterhouseCoopers found that the model produced reliable estimates, but it also made recommendations for enhancements. See *PricewaterhouseCoopers Assessment of the Service Award Liability Calculation* at 2-4 (Dec. 10, 2001) ([Exhibit 3](#)).

¹⁵ Fiscal 2002 Budget Estimate and Performance Plan at 17 (Apr. 2001).

¹⁶ Letter from the Honorable Christopher S. Bond and the Honorable Barbara A. Mikulski, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, United States Senate, to the Honorable Luise Jordan, Inspector General, Corporation for National and Community Service (May 10, 2001) ([Exhibit 4](#)).

for the 2003 program year, assuming Congress elected to continue AmeriCorps membership at levels consistent with the past several years.¹⁷

II. PROBLEMS BEGIN TO SURFACE

A. Increasing AmeriCorps Enrollment

In 1994, AmeriCorps enrolled 25,149 members. By 2000, AmeriCorps enrollment had more than doubled to 52,891. The number of AmeriCorps members who actually earned an education award rose from 18,778 in program year 1994, to 36,353 in program year 2000.¹⁸ Taking into account the percentage of AmeriCorps members who completed their terms of service and used their education awards, the Corporation approved approximately 61,000 member positions in program year 2001, and 67,000 member positions in 2002. However, Mr. Gary Kowalczyk used the Service Award Liability Model to estimate that between 49,717 and 51,717 AmeriCorps members would actually enroll in program years 2001 and 2002.¹⁹ The number of approved positions exceeded estimated enrollment for Trust liability purposes, but this situation was not considered unusual because it was expected that not all AmeriCorps members would complete their terms of service or use their education award.

In 2002, actual AmeriCorps member enrollment increased dramatically, perhaps due to the September 11, 2001, terrorist attacks on New York and Washington. Following those attacks, many Americans felt compelled to serve their country. Those civic attitudes were likely magnified by President George W. Bush's call to service during his 2002 State of the Union address.

B. Early Warnings Missed by Management

Corporation management did not fully comprehend the ramifications of this increased enrollment until late in calendar year 2002. The first warning was provided in a July 11, 2002, e-mail from Mr. Kowalczyk to Chief Executive Officer Dr. Leslie Lenkowsky, Ms. Zenker, AmeriCorps Director Rosemary Mauk, and Ms. Susannah Washburn, former Senior Aide to the Chief Executive Officer. The e-mail notified these recipients that AmeriCorps enrollment had reached 56,500 for program year 2001. In the e-mail, Mr. Kowalczyk estimated that enrollment could reach 58,000 by the end of 2002, but cautioned that "down the line" the Corporation would have to be sure that the Trust had sufficient funds to handle the increased enrollment.²⁰ Dr.

¹⁷ *Response to the Subcommittee on VA, HUD, and Independent Agencies' Request for Review of the Corporation for National Service's Fiscal Year 2002 Funding Request for the National Service Trust Fund*, OIG Audit Report No. 01-49 (June 15, 2001) ([Exhibit 5](#)).

¹⁸ *System for Programs, Agreements, and National Service Participants Enrollment Report* (Jan. 7, 2002) ([Exhibit 6](#)).

¹⁹ Mr. Kowalczyk based these estimates on various enrollment, award-earning, and award-usage scenarios.

²⁰ E-mail from George Kowalczyk, Director of Planning and Program Integration, Corporation for National and Community Service, to Dr. Leslie Lenkowsky, Chief Executive Officer, Corporation for National and Community Service, *et al.* (July 11, 2002) ([Exhibit 7](#)).

Lenkowsky responded via e-mail to Mr. Kowalczyk, stating that the expected increase in enrollment was a “VERY good thing.”²¹

On August 28, 2002, Mr. Kowalczyk sent another e-mail to the same addressees. It was also sent to Ms. Christine Benero, former Director of the Office of Public Affairs; Mr. David Reingold, Director of the Department of Research and Policy Development; and Mr. William Anderson, Deputy Chief Financial Officer and then-Acting Chief Financial Officer. That e-mail stated that AmeriCorps enrollment had hit 60,000, an all-time high. Mr. Kowalczyk also warned that the Trust funding estimates needed to be updated “as we go forward. We have a critical need for more resources in the Trust over the next couple of years. . . . Unless this is fixed, we will have a very real future problem.”²²

The OIG interviewed all of the recipients of Mr. Kowalczyk’s e-mail alerts, but only one of them, Mr. Reingold, reported making a connection between increased enrollment and its effect on the Trust. Noting that he was a new employee at the time, Mr. Reingold stated that he believed his comments would be ignored.²³ The other e-mail recipients said they believed at the time that increased enrollment was a positive sign.

Late in calendar year 2002, Corporation management began to realize that Trust liabilities might exceed assets.²⁴ Compounding the effect of increased enrollment on the Trust, Congress passed a series of continuing resolutions during its annual appropriations period that allowed the Corporation and other Federal agencies to receive budget authority based on the prior year’s authorizations. Since the Corporation had not requested nor received fiscal year 2002 appropriations for the Trust, no additional funds for the Trust were provided by the continuing resolutions. As these resolutions recurred without a budget agreement and a new appropriation, the possibility increased that the Trust’s liabilities could exceed its assets.

By November 2002, Corporation management was cognizant of the precarious state of the Trust. Early that month, Mr. William Anderson, the Corporation’s former Acting Chief Financial Officer, informed his successor, Ms. Michelle Guillermin, that there might not be enough funds in the Trust to cover future education awards due to the continuing budget resolutions passed by Congress. Shortly after receiving Mr. Anderson’s comments, Ms. Guillermin and other senior staff received a briefing from Mr. Kowalczyk. He expressed similar concerns about the state of the Trust. The following day, Ms. Guillermin called Dr. Lenkowsky to notify him of the potential problem with the Trust.²⁵

²¹ The emphasis appears in the original e-mail. See E-mail response from Dr. Leslie Lenkowsky, Chief Executive Officer, Corporation for National and Community Service, to George Kowalczyk, Director of Planning and Program Integration, Corporation for National and Community Service, *et al.* (July 11, 2002) ([Exhibit 7](#)).

²² E-mail from George Kowalczyk, Director of Planning and Program Integration, Corporation for National and Community Service, to Dr. Leslie Lenkowsky, Chief Executive Officer, Corporation for National and Community Service, *et al.* (Aug. 28, 2002) ([Exhibit 8](#)).

²³ Interview of David Reingold, Director of the Department of Research and Policy Development, Corporation for National and Community Service (Jan. 15, 2003).

²⁴ Interview of Michelle Guillermin, Chief Financial Officer, Corporation for National and Community Service (Dec. 13, 2002).

²⁵ *Id.*

On November 7, 2002, Mr. Kowalczyk, in an e-mail to Dr. Lenkowsky, accepted full responsibility for not fully notifying Corporation senior management of the Trust ramifications posed by 2002's dramatic increase in enrollment.²⁶ Although Mr. Kowalczyk's position description did not specifically assign him the responsibility for Trust liability forecasting, he generated model forecasts that estimated Trust liability and provided a basis for the Corporation's budget submissions. Further, Mr. Kowalczyk routinely ran the model, had access to enrollment data and usage reports, and was aware of Trust balances. With this information, he should have been able to determine the Trust liability and the impact of increased enrollment on the Trust. Mr. Kowalczyk, at the direction of Dr. Lenkowsky, was removed as Director of Planning and Program Integration in January 2003, and reassigned to another position within the Corporation. He later retired on May 3, 2003.

C. Enrollment Paused

On November 15, 2002, Corporation senior management informed OMB and Congressional staff that it had temporarily paused AmeriCorps enrollment to prevent Trust liabilities from exceeding Trust assets. The Corporation said that an unexpected increase in AmeriCorps enrollment triggered the pause. In response, Congress requested on November 20, 2002, that the OIG investigate the circumstances leading to the pause in enrollment as well as the Trust's funding levels. In addition, Congress requested that the OIG investigate "a violation of the Anti-Deficiency Act, since it appears that the Corporation created more liabilities than it budgeted for."²⁷ After Congress approved a \$100 million supplemental appropriation for the Trust, the enrollment suspension was lifted on March 11, 2003.

III. INTERNAL FAILURES LEAD TO NEW PROCEDURES

A. Lack of Internal Controls and Flawed Procedures

During the course of this investigation, it became clear that Corporation procedures for enrolling AmeriCorps members lacked internal controls and guidelines. Under the grant award process in place during fiscal year 2002, the Director of AmeriCorps determined the funding level and number of positions to be awarded to each of the three AmeriCorps programs (AmeriCorps*State and National, AmeriCorps*VISTA, and AmeriCorps*NCCC) without regard to Trust funding levels.

²⁶ E-mail from George Kowalczyk, Director of Planning and Program Integration, Corporation for National and Community Service, to Dr. Leslie Lenkowsky, Chief Executive Officer, Corporation for National and Community Service (Nov. 7, 2002) ([Exhibit 9](#)).

²⁷ The congressional request, from Senator Christopher S. Bond, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, requested that OIG investigate and audit the Corporation's management and oversight of the Trust. The request specifically mentioned a potential violation of the Anti-Deficiency Act and called for OIG to determine the causes for what was termed "over-enrollment," provide recommendations to prevent the problem from recurring, and identify staff and managers responsible for managing, administering, and monitoring AmeriCorps program enrollment and budgeting. See Letter from the Honorable Christopher S. Bond to the Honorable J. Russell George (Nov. 20, 2002) ([Exhibit 2](#)).

Under Corporation procedures in effect at that time, the AmeriCorps program office tracked grant awards using two databases: the System for Programs, Agreements, and National Service Participants (formerly known as SPAN, now referred to as eSPAN)²⁸ and the Web Based Reporting System.²⁹ Through the Web Based Reporting System, as it operated at the time, grant recipients could request permission to enroll additional members beyond their original authorization. From at least 1999 until the Corporation halted enrollment in November 2002, Corporation program officers or grants officers typically approved these requests to enroll extra AmeriCorps members without regard to the additional Trust funding needed to support these members.

B. Correcting AmeriCorps Funding Level and Membership Procedures

To correct these deficiencies in internal controls, Dr. Lenkowsky issued guidelines on January 7, 2003, to implement new procedures regarding program commitments and AmeriCorps enrollment.³⁰ AmeriCorps programs, through the Web Based Reporting System, are now required to use a new AmeriCorps Commitment Tracker to track an applicant's status and to add new members. Each program's homepage on the Web Based Reporting System now displays a Member Applicant Commitment summary chart.³¹ This summary chart quickly informs program officials of the number of commitments made, days left in the commitment, cancelled commitments, and totals of enrolled and exited members. The AmeriCorps Commitment Tracker also calls for commitments to automatically expire if the program has not enrolled a member within 45 days of recording a commitment.

IV. IMPROPER REPORTING ON OFFICE OF MANAGEMENT AND BUDGET STANDARD FORM 133

The investigation revealed that the Corporation might have improperly reported certain Trust-related amounts to OMB on Standard Form (SF) 133, entitled "Report on Budget Execution and Budgetary Resources." The SF 133 fulfills the statutory requirement that the President review Federal expenditures at least four times a year. These reporting forms provide a consistent presentation of data across programs within each agency and to other Federal agencies. They also ensure internal communication among program, budget, and accounting staffs.³²

²⁸ The eSPAN is a database used principally by Trust personnel for tracking and reporting AmeriCorps members and their usage of education awards. The ultimate approval and payment of an AmeriCorps member's education award is monitored in this database.

²⁹ The Web Based Reporting System collects program and member data input from the field. Grant recipients are responsible for inputting data for each new AmeriCorps member they enroll and for recording service hours as members progress through their term of service. This system also allows each grant recipient to input progress reports and expense data.

³⁰ Memorandum from Dr. Leslie Lenkowsky, Chief Executive Officer, Corporation for National and Community Service (Jan. 7, 2003) ([Exhibit 10](#)).

³¹ AmeriCorps Commitment Tracker, Web Based Reporting System summary (Feb. 17, 2003) ([Exhibit 11](#)).

³² See OMB Circular No. A-11 (2003).

The SF 133 reflects amounts apportioned to each Federal agency and consists of three major sections:

1. Budgetary Resources – Reflects budgetary resources available for obligation.
2. Status of Budgetary Resources – Reflects budgetary resources that have been obligated.
3. Relation of Obligations to Outlays – Reflects obligated amounts that have been expended.

The Corporation had been reporting an amount equal to appropriated funds plus the Trust's interest earnings. In addition, the Corporation had been reporting Trust obligations based on actual payments of education awards. Since the creation of the Trust in 1993, OMB had repeatedly accepted this reporting method. This acceptance continued until the pause in AmeriCorps enrollment in November 2002.

The Office of Management and Budget now disagrees with this reporting method, maintaining that the Corporation should not have included interest earnings with appropriations. The OMB also asserted that the Corporation should have been reporting the education award obligation at a point in time when the Corporation made a binding agreement with a member. This point in time is well in advance of the actual payment of an award.³³

In its April 1, 2003, letter to the Corporation, OMB determined that the Corporation's incorrect reporting on the SF 133 had produced a Trust deficiency of \$64 million.³⁴ However, OMB also stated that it had insufficient information to conclude that this deficiency constituted a violation of the Anti-Deficiency Act.

V. DIVERGING LEGAL OPINIONS

A. The Corporation and OIG Opinions

During this inquiry, the question of when the Corporation should record a Trust obligation became the key to determining if the Anti-Deficiency Act had been violated. Since 1994, the Corporation had been recording a Trust obligation at the time a payment from the Trust was made to a qualifying AmeriCorps member. Without detailed guidance from OMB regarding Trust operations, the Corporation determined, based on historical use of education awards, that it would be fiscally irresponsible to obligate the entire award amount when a member enrolled because not all AmeriCorps members would earn or use their awards.³⁵ The Corporation thereafter decided to record the obligation at or near the time of payment.³⁶ Until recently, this practice had gone unchallenged by Congress, the General Accounting Office (GAO), and OMB.

³³ See Legal opinion from Philip J. Perry, General Counsel, Office of Management and Budget, to Susan A. Poling, Associate General Counsel, General Accounting Office (Apr. 1, 2003) ([Exhibit 12](#)).

³⁴ *Id.*

³⁵ Interview of David Spevacek, former Senior Director for Budget and Trust, Corporation for National and Community Service (Dec. 18, 2002).

³⁶ *Id.*

However, after receiving Congress' request to initiate an investigation of Corporation management and oversight of the Trust, the Corporation's Trust-related accounting practices were clearly being called into question. The Corporation's Office of the General Counsel provided a legal opinion concluding that a Trust obligation occurs no sooner than at the time a member is enrolled in the Trust.³⁷ In a separate legal opinion, the Counsel to the Inspector General concluded that a Trust obligation occurs when an AmeriCorps member signs a member contract, which takes place shortly before that person's enrollment in the Trust.³⁸

B. OMB's First Opinion of April 1, 2003

On April 1, 2003, OMB, at the request of GAO, expressed its views on the Corporation's practices with respect to the Trust. The OMB provided a legal opinion concluding that the Corporation had been improperly recording the amount of the Trust's budgetary obligations for many years, citing the Corporation's practice of recording a Trust obligation at the time a payment was made to a qualified AmeriCorps member.³⁹ In its opinion, OMB did not reveal at what point an obligation should in fact be recorded, only that the Corporation incurs an obligation well in advance of the Corporation's practice.

C. The Inspector General's Senate Testimony on April 10, 2003

On April 10, 2003, Inspector General J. Russell George testified before the Senate Appropriations Subcommittee on Veteran's Affairs, Housing and Urban Development, and Independent Agencies. Based on the Counsel to the Inspector General's legal opinion as to when a Trust obligation should be recorded,⁴⁰ Inspector General George testified that OIG had not yet found evidence to substantiate a violation of the Anti-Deficiency Act by any employee of the Corporation. The Corporation's fiscal year 2002 audited financial statements supported this assertion. The financial statements reflected that Trust liabilities did not exceed Trust assets at any time. In addition, the independent audit firm KPMG LLP concurred in an unqualified opinion, issued on February 4, 2003, that the Corporation's financial statements showed that Trust liabilities did not exceed Trust assets.⁴¹ However, as more information became available and legal opinions were refined, OIG determined that Anti-Deficiency Act violations did indeed occur. A reconstructed analysis of the Trust's financial health, completed by the Corporation on May 8, 2003, at the direction of OMB, shows that the Trust's unobligated balance exceeded its total appropriations and interest income beginning in 2000.⁴²

³⁷ Legal opinion from Nicola Goren, Office of the General Counsel, Corporation for National and Community Service, to Frank Trinity, General Counsel, Corporation for National and Community Service (Dec. 3, 2002) ([Exhibit 13](#)).

³⁸ Legal opinion from Vincent Mulloy, Counsel to the Inspector General, Corporation for National and Community Service, to Robert Shadowens, Deputy Inspector General for Investigations and Operations, Corporation for National and Community Service (Dec. 23, 2002) ([Exhibit 14](#)).

³⁹ Legal opinion from Philip J. Perry to Susan A. Poling (Apr. 1, 2003) ([Exhibit 12](#)).

⁴⁰ Legal opinion from Vincent Mulloy to Robert Shadowens (Dec. 23, 2002) ([Exhibit 14](#)).

⁴¹ See *Audit of the Corporation for National and Community Service's Fiscal Year 2002 Financial Statements*, OIG Audit No. 03-01 (Feb. 4, 2003) ([Exhibit 15](#)).

⁴² See *Reconstruction of Trust Balances* (May 8, 2003) ([Exhibit 1](#)).

D. GAO's First Opinion of April 10, 2003

On the same day that Inspector General George testified before the Senate, GAO published a report opining that the Corporation should have recorded a Trust obligation at the time of the grant award.⁴³ The GAO noted that the awarding of a grant occurs significantly earlier than the point in time when the Corporation had been recording a Trust obligation. The GAO also asserted that the Corporation should be recording the value of an education award multiplied by all approved AmeriCorps positions, thereby precluding the use of estimates in determining the amount of funds needed for the Trust. The GAO report did not offer an opinion on Anti-Deficiency Act issues.

E. OMB's Second Opinion of May 2, 2003

The OMB reviewed GAO's report and issued a second legal opinion on May 2, 2003.⁴⁴ The OMB maintained that the Corporation should record a Trust obligation at the point when a grant recipient has the authority to fill national service positions. This point in time for recording Trust obligations was closer to GAO's interpretation of the statute than the Corporation's interpretation. However, OMB concluded that GAO's position on the *amount* that the Corporation must record for an education award was incorrect. The OMB determined, in contrast to GAO, that the Corporation should be allowed to use estimates, albeit conservative ones, of the value of awards that will be earned.

F. OMB's Third Opinion of May 30, 2003

On May 30, 2003, OMB provided a third legal opinion clarifying its position on the value of an education award.⁴⁵ The OMB opinion concluded that the Corporation's statutory authority permitted it to calculate the value of an education award on a present value basis.⁴⁶

G. GAO's Response of June 6, 2003

The GAO reviewed OMB's May 30, 2003, legal opinion and issued a response on June 6, 2003.⁴⁷ It disagreed with OMB's May 2, 2003, opinion, which allowed the Corporation to record its obligations for education benefits on the basis of estimates of what it will have to pay when

⁴³ *Preliminary Observations on the National Service Trust and AmeriCorps*, GAO Report No. GAO-03-642T (Apr. 10, 2003) ([Exhibit 16](#)).

⁴⁴ Legal opinion from Philip J. Perry, General Counsel, Office of Management and Budget, to Frank Trinity, General Counsel, Corporation for National and Community Service (May 2, 2003) ([Exhibit 17](#)).

⁴⁵ Legal opinion from Philip J. Perry, General Counsel, Office of Management and Budget, to Frank Trinity, General Counsel, Corporation for National and Community Service (May 30, 2003) ([Exhibit 18](#)).

⁴⁶ The OMB opinion maintains that using the present value of education awards enables the Corporation to carry out its mission more efficiently than the GAO approach. The OMB opinion reasons that if the Corporation obligates the full amount of the education award when it approves a position, then the Trust, with its subsequent interest earnings, will have excess funds available to pay the award once it is used. If the Corporation obligates the present value of an award, relying on historical experience and conservative estimates of when the award is actually used, then the Trust will have the funds necessary – once interest is factored in – to pay the award. *See id.*

⁴⁷ Legal opinion from Anthony H. Gamboa, General Counsel, General Accounting Office, to the Honorable Christopher S. Bond and the Honorable Barbara A. Mikulski, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, United States Senate (June 6, 2003) ([Exhibit 19](#)).

education awards are earned. In its response, GAO remained of the opinion that the Corporation should record the maximum potential liability to cover the education benefits of new participants at the time the Corporation authorizes a grant recipient to fill positions. It also noted that the Corporation could seek legislation permitting it to use an estimation model for recording its obligations.

H. The Strengthen AmeriCorps Act

The Corporation received this legislative permission in the form of the Strengthen AmeriCorps Act, which President George W. Bush signed on July 3, 2003.⁴⁸ The Act permits the use of estimates in determining the amount that should be obligated for the Trust. This statute also explicitly states that the Corporation approves a position for AmeriCorps*State and National members when it *awards* a grant. For AmeriCorps*VISTA or AmeriCorps*NCCC members, the Corporation approves a position at the time it enters into an enforceable agreement with them.

VI. ANTI-DEFICIENCY ACT ANALYSIS

The Anti-Deficiency Act prohibits an employee or officer of the United States government from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation.⁴⁹ Potential penalties for violating the Anti-Deficiency Act include written reprimands, suspension from duty without pay, removal from office, a fine of not more than \$5,000, or imprisonment for not more than two years.⁵⁰ The OMB Circular A-11, "Preparation, Submission, and Execution of the Budget," details the specific reporting requirements agencies must follow for Anti-Deficiency Act violations. If the agency determines that the violation was willfully and knowingly committed, it must be referred to the United States Department of Justice. For all other instances, the matter must be reported to OMB. In addition to the facts and details surrounding the violation, the names and positions of the officers or employees responsible for the violation must be reported.

The OMB requested that the Corporation reconstruct, on an annual basis, the Trust's finances. Using OMB's definition of the Trust obligation point, Mr. William Anderson, the Deputy Chief Financial Officer, reconstructed the Trust's financial status beginning in 1994.⁵¹ This reconstruction was not based on the Corporation's financial statements, but on the reporting methodology for OMB SF 133. This reconstruction revealed that the Trust's liabilities, based on education awards and interest forbearance expected to be paid, exceeded the Trust's appropriations and interest earnings beginning in 2000. This condition ended when President George W. Bush signed the Strengthen AmeriCorps Program Act on July 3, 2003, because the Act legitimized the Corporation's use of estimates in recording the value of education awards. In addition, the Act clarified the point in time when an obligation should be recorded against the Trust.

⁴⁸ Pub. L. No. 108-45, 117 Stat. 844 (2003).

⁴⁹ 31 U.S.C. § 1341 (2003).

⁵⁰ 31 U.S.C. § 1350 (2003).

⁵¹ Reconstruction of Trust Balances (May 8, 2003) ([Exhibit 1](#)).

In response to the Congressional request to assign responsibility for these repeated Anti-Deficiency Act violations, OIG requested the position descriptions of every Corporation employee with responsibility for Trust operations. The OIG's investigation found that the official position descriptions for upper level managers did not necessarily coincide with actual day-to-day responsibilities. This created a problem in identifying Corporation employees responsible for the Anti-Deficiency Act violation. Under the Act, violations are normally attributable directly to a specific purchase or obligation by a specific individual.⁵² This was not the case with the Trust, as many Corporation employees had a role in reviewing, approving, and obligating Federal funds over an extended period of time. The inability of the Corporation to accurately define an employee's duties and responsibilities prevented OIG from directly assigning responsibility for an Anti-Deficiency Act violation.

VII. IDENTIFYING THOSE WITH RESPONSIBILITY FOR THE TRUST

The OIG has identified the following Corporation positions that had a direct impact on the Trust, and the employees who held these positions at the time when the reconstruction spreadsheets show an Anti-Deficiency Act violation occurred. Each position description is summarized below except for the position of Chief Executive Officer, for which no written position description exists. The positions are divided into three categories: positions with Trust oversight, positions responsible for Trust operations, and positions that impact the Trust.

A. Positions with Trust Oversight

The Chief Executive Officer is appointed by the President, with the advice and consent of the United States Senate. Though there is no written position description for the Chief Executive Officer of the Corporation, this individual is generally responsible for accomplishing the Corporation's mission of providing opportunities for Americans of all ages and backgrounds to engage in service that addresses the Nation's educational, public safety, environmental, and other essential needs. During the period when the reconstruction spreadsheets show an Anti-Deficiency Act violation, the Honorable Harris Wofford and his successor, Dr. Leslie Lenkowsky, were the Chief Executive Officers. Mr. Wofford led the Corporation from October 10, 1995, to January 20, 2001. Dr. Leslie Lenkowsky succeeded Mr. Wofford as the Corporation's CEO on October 17, 2001. He has remained in that capacity as of the date of this report, but has submitted his resignation, effective August 15, 2003.

The Chief Operating Officer has general Trust oversight responsibilities by supervising and directing all operational functions of the Corporation through subordinate managers and staff. Ms. Wendy Zenker occupied this position from June 7, 1998, to February 9, 2003. Ms. Zenker also served as the Acting Chief Executive Officer at the time that the Corporation decided not to request additional funds for the Trust, a decision that contributed to the pause in enrollment. Dr. Lenkowsky, as CEO, reassigned Ms. Zenker to the position of Director of the AmeriCorps National Civilian Community Corps in February 2003. The position of Chief Operating Officer remained vacant for the remainder of the period during which the reconstruction spreadsheets show an Anti-Deficiency Act violation.

⁵² See 31 U.S.C. § 1341 (2003).

Like the Chief Executive Officer, the Chief Financial Officer is also a Presidential appointee. The Chief Financial Officer reports directly to the Chief Executive Officer and is the principal advisor on all financial matters. This includes the Corporation's financial management, reporting, policies, and internal controls. Mr. Anthony Musick occupied this position from November 22, 1999, to January 20, 2001. Ms. Michelle Guillermin became the Chief Financial Officer in October 2002, and remains in this position as of the date of this report. Both Mr. Musick and Ms. Guillermin were charged with responsibility for the Corporation's financial matters during the period the reconstruction spreadsheets show an Anti-Deficiency Act violation.

The Deputy Chief Financial Officer assists the Chief Financial Officer in formulating and directing the financial and administrative programs and policies of the Corporation, and serves as the Acting Chief Financial Officer when required. The Deputy Chief Financial Officer is responsible for directing subordinate staff, determining and administering both human and fiscal resources, and evaluating program implementation and accomplishment. This official is also responsible for the oversight, administration, and management of the National Service Trust. Mr. William Anderson was the Deputy Chief Financial Officer from January 30, 2000, to the present, and he also served as the Acting Chief Financial Officer from January 21, 2001, to November 15, 2001. Mr. Anderson was part of the senior management team that decided not to request additional funds for the Trust in the Corporation's fiscal year 2002 budget submission. Furthermore, his service includes the period during which the Corporation was in violation of the Anti-Deficiency Act.

B. Positions Responsible for Trust Operations

The Director of the National Service Trust is charged with responsibility for all Trust policy direction, investment, and operational aspects. Specifically, the Director ensures that appropriated funds for the Trust are responsibly invested and that sufficient cash is available for the payment needs of the Trust. The Director is also responsible for the design, accuracy, and operations of the Trust's information systems. Two individuals occupied this position during the period the spreadsheets show an Anti-Deficiency Act violation. Ms. Donna Gatewood was the Director of the National Service Trust from March 1, 1998, to October 31, 2000. For the last six months of Ms. Gatewood's tenure, she shared the responsibilities of the Director of the National Service Trust with Ms. Charlene Dunn, who served from April 30, 2000, to February 22, 2003. This position has remained vacant since Ms. Dunn resigned in February 2003.

The Senior Director for Budget and Trust Operations also assumed responsibility for Trust operations. Mr. David Spevacek, who held the post from March 1, 1998, to January 30, 2000, was the only person to serve in this position, where he was the principal advisor on budgetary matters for the Corporation. Mr. Spevacek was responsible for Trust policy, investment, and operational aspects, including the development and implementation of all Trust activities. As the Senior Director for Budget and Trust Operations, he was also responsible for ensuring that appropriated Trust funds were properly invested and that sufficient cash was available for the payment needs of the Trust.

C. Positions that Impact the Trust

The Director of AmeriCorps is responsible for the overall leadership of AmeriCorps*State and National, AmeriCorps*VISTA, and AmeriCorps*National Civilian Community Corps. The Chief Executive Officer selects and appoints the AmeriCorps Director. The Director of AmeriCorps oversees the Office of Recruitment, which manages all of the Corporation's national and local AmeriCorps programs, and reports on the condition of AmeriCorps programs to the Chief Executive Officer and Chief Financial Officer. The Director is also responsible for developing innovative approaches to AmeriCorps programming, monitoring, recruiting, the grant award process, and local project development. During the time of the Anti-Deficiency Act violation, Ms. Deborah Jospin and her successor, Ms. Rosemary Mauk, served as the Directors of AmeriCorps. Ms. Jospin's tenure began on October 31, 1997, and ended on January 19, 2002. Ms. Mauk served as Director, for a period overlapping with Ms. Jospin, from November 13, 2001, through the date of this report.

The Director of Grants Management also occupies a position that impacts the Trust. The Director of Grants Management is charged with the oversight, direction, and leadership of the Corporation's grants management program. The Director serves as a key advisor to the Chief Financial Officer and provides technical advice on all aspects of grants, contracts, and procurement. The Director oversees the selection of grantees and contractors, and also ensures that internal controls monitor grant processes and procedures. This position was modified on May 21, 1999, to remove all references to contracts and contract oversight. From November 7, 1999, to February 10, 2001, Bruce Cline was the Director of Grants Management. Margaret Hood, aka Peg Rosenberry, replaced him on February 11, 2001, and continues to serve in this position as of the date of this report. During Mr. Cline and Ms. Hood's tenure, the spreadsheets show an Anti-Deficiency Act violation.

The Director of Planning and Program Integration also influenced the Trust. Mr. Gary Kowalczyk is the only person to hold this title. The Director of Planning and Program Integration is responsible for the management and initiation of high-visibility, high-impact programs that involve or could involve complex political, programmatic, and organizational issues. The Director works with various Federal Executive departments, Congressional committees, and service providers to coordinate new program development. The Director also manages and oversees, through subordinate managers, certain functions that involve multiple Corporation offices. Mr. Kowalczyk served as the Director of Planning and Program integration from February 23, 1997, to May 3, 2003. During a significant portion of Mr. Kowalczyk's tenure, the Corporation was violating the Anti-Deficiency Act.

VIII. OFFICE OF INSPECTOR GENERAL FINDINGS AND RECOMMENDATIONS

This investigation identified conditions that contributed to a breakdown in communication and coordination between the Corporation's budget development functions, the AmeriCorps program office, and the Trust office. As a result, the Corporation had no effective system for monitoring AmeriCorps member enrollment and comparing enrollment to Trust funding levels.

a. The Office of Inspector General found that Corporation personnel who were not part of the Trust office were making Trust liability projections. Although Trust personnel were aware of these projections, they did not initiate the process. According to the position description, the Director of the National Service Trust is fully responsible for Trust liability projections. Allowing Trust budgetary decisions to be made without the Trust Director's input resulted in a fragmentation of duties and responsibilities.

The Office of Inspector General recommends that only qualified Trust personnel be allowed to make Trust liability projections and have input on Trust budgetary decisions.

b. The Corporation's position descriptions for Trust supervision and operations were not consistent with actual duties. The Corporation's Personnel System Handbook, approved in June 1995, details the Corporation's classification of positions and the purpose of position descriptions. The current position description charges the Trust Director with sole responsibility for all aspects of Trust operations. In actual practice, the Trust Director manages only day-to-day operations. In addition, the position description for the Trust Portfolio Manager only lists general duties and responsibilities.

The Office of Inspector General recommends that the Corporation use position descriptions and an accurate organizational chart to establish responsibility, accountability, and authority for all key Trust positions.

c. The Corporation has no single management reporting process that allows information from the Web Based Reporting System and eSPAN to be viewed, analyzed, or cross-referenced in a single report. Corporation managers must currently rely on multiple reports that often fail to explicitly portray the relationship between AmeriCorps enrollment and the Trust. This fragmentation of information does not provide Corporation managers with the data necessary to make sound decisions.

The Office of Inspector General recommends that the Corporation develop an automated, joint method for simultaneously analyzing information in both databases. This joint method should provide real-time reports indicating the impact of changes in enrollment on the Trust.

d. The eSPAN database does not contain any automatic programming "triggers" to alert Trust personnel when enrollment reaches a precarious level.

The Office of Inspector General recommends that automated alerts be established within the Web Based Reporting System and eSPAN to warn grants officers, AmeriCorps program officers, and Trust employees of potential problems regarding enrollment activities. The OIG

further recommends that automated safeguards be established in all enrollment systems to prevent enrollment from exceeding predetermined levels. While the Web Based Reporting System limits over-enrollment on a grant-by-grant basis, cumulative enrollment safeguards should be programmed into these systems.

e. This investigation determined that the only written documentation regarding the Service Award Liability Model was the PricewaterhouseCoopers audit report.⁵³ This document provides a detailed description of the model, but cannot be considered a comprehensive user's guide. There is no Corporation guidance as to who should have access to the model, or when and how the model should be used. Also, only a handful of Corporation employees are capable of running and understanding the model.

The Office of Inspector General recommends that the Corporation publish formal guidance regarding use of the model. This guidance should describe who should have access to the model, when it should be run, where and how to obtain model data, and to whom the generated reports should be sent for review.

The Office of Inspector General believes these recommendations will enhance the Corporation's ability to effectively manage the National Service Trust.

⁵³ PricewaterhouseCoopers Assessment of the Service Award Liability Calculation at 2-4 (Dec. 10, 2001) ([Exhibit 3](#)).

Office of the Inspector General Contacts, Acknowledgments

This report was compiled under the direction of the Honorable J. Russell George, Inspector General.

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IX. EXHIBIT LIST

- [Exhibit 1 – Reconstruction of Trust Balances \(May 8, 2003\)](#)
- [Exhibit 2 – Letter from the Honorable Christopher S. Bond to the Honorable J. Russell George \(Nov. 20, 2002\)](#)
- [Exhibit 3 – PricewaterhouseCoopers Assessment of the Service Award Liability Calculation \(Dec. 10, 2001\)](#)
- [Exhibit 4 – Letter from the Honorable Christopher S. Bond and the Honorable Barbara A. Mikulski to the Honorable Luise Jordan \(May 10, 2001\)](#)
- [Exhibit 5 – Response to the Subcommittee on VA, HUD, and Independent Agencies' Request for Review of the Corporation for National Service's Fiscal Year 2002 Funding Request for the National Service Trust Fund \(June 15, 2001\)](#)
- [Exhibit 6 – System for Programs, Agreements, and National Service Participants Enrollment Report \(Jan. 7, 2002\)](#)
- [Exhibit 7 – E-mail from George Kowalczyk to Dr. Leslie Lenkowsky, et al. \(July 11, 2002\)](#)
- [Exhibit 8 – E-mail from George Kowalczyk to Dr. Leslie Lenkowsky, et al. \(Aug. 28, 2002\)](#)
- [Exhibit 9 – E-mail from George Kowalczyk to Dr. Leslie Lenkowsky \(Nov. 7, 2002\)](#)
- [Exhibit 10 – Memorandum from Dr. Leslie Lenkowsky \(Jan. 7, 2003\)](#)
- [Exhibit 11 – AmeriCorps Commitment Tracker \(Feb. 17, 2003\)](#)
- [Exhibit 12 – Legal opinion from Philip J. Perry to Susan A. Poling \(Apr. 1, 2003\)](#)
- [Exhibit 13 – Legal opinion from Nicola Goren to Frank Trinity \(Dec. 3, 2002\)](#)
- [Exhibit 14 – Legal opinion from Vincent Mulloy to Robert Shadowens \(Dec. 23, 2002\)](#)
- [Exhibit 15 – Audit of the Corporation for National and Community Service's Fiscal Year 2002 Financial Statements \(Feb. 4, 2003\)](#)
- [Exhibit 16 – Preliminary Observations on the National Service Trust and AmeriCorps \(Apr. 10, 2003\)](#)
- [Exhibit 17 – Legal opinion from Philip J. Perry to Frank Trinity \(May 2, 2003\)](#)
- [Exhibit 18 – Legal opinion from Philip J. Perry to Frank Trinity \(May 30, 2003\)](#)
- [Exhibit 19 – Legal opinion from Anthony H. Gamboa to the Honorable Christopher S. Bond and the Honorable Barbara A. Mikulski \(June 6, 2003\)](#)