

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

NOV 18 1998

The Honorable Harris Wofford
Chief Executive Officer
Corporation for National Service
1201 New York Avenue, N.W.
Washington, D.C. 20525

Dear Senator Wofford:

I am writing in reply to your November 2, 1998 letter to Secretary of Labor Alexis M. Herman regarding the relationship between the work done by AmeriCorps members and the Fair Labor Standards Act. AmeriCorps participants perform services pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501 *et seq.*, working for community based non-profit organizations. AmeriCorps participants enroll for a specific term, which is between nine and twelve months for full-time members, and they receive a fixed allowance to cover their living expenses. After the completion of their service, AmeriCorps participants also receive an education award.

When Congress amended the National and Community Service Act by passing the National and Community Service Trust Act of 1993, it included a specific definition of the term "participant." In that definition, which applies to members in AmeriCorps positions, Congress included the following proviso: "(B) RULE. A participant shall not be considered to be an employee of the program in which the participant is enrolled." 42 U.S.C. 12511(17)(B). Given this statutory language, we agree that an individual whose relationship with a program is limited to that of an AmeriCorps participant is not an employee of the program for purposes of the Fair Labor Standards Act.

Accordingly, in light of Congress' definitional Rule declaring that AmeriCorps participants are not employees of the program in which they are enrolled by virtue of their AmeriCorps service, we concur that they are not entitled to wages from the program that meet the requirements of the Fair Labor Standards Act.

We trust that this fully responds to your inquiry.

Sincerely,

John R. Fraser
Acting Administrator

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