

BY FAX (615 532 6950)

April 19, 1996



William Aaron
Tennessee Commission on National & Community Service

Re: Garnishment orders.

Dear Mr. Aaron:

I understand that you have inquired about the proper action for AmeriCorps programs to take in response to garnishment orders relating to AmeriCorps Members.

AmeriCorps Members receive a living allowance during their term of service. Corporation grant funds may be used to pay up to 85% of the living allowance.

Sovereign immunity protects the property interests of the United States from suits to which it has not consented. The federal government has a continuing property interest in AmeriCorps grant funds until they are expended in accordance with the grant's terms. In this case, the Corporation has a property interest in the federal share of the Member's living allowance, and this property interest is protected by sovereign immunity. The Corporation itself is without authority to waive this immunity -- only Congress may do so. Congress has effected a limited waiver of sovereign immunity with respect to individuals' legal obligation to provide child support or make alimony payments. 42 U.S.C. § 659(a). However, this waiver applies only to moneys "the entitlement to which is based upon remuneration for employment". *Id.*

Under the National and Community Service Act of 1990, as amended, AmeriCorps participants are not considered to be engaged in employment. 42 U.S.C. § 12511(17)(B). Under the Act, participants are not allowed to duplicate an employee's duties, may not perform any services that were performed by the employees, and may not otherwise displace employees. 42 U.S.C. § 12637. Because AmeriCorps participants are not federal employees, sovereign immunity applies to the federal share of the living allowance.

1201 New York Avenue, NW
Washington, DC 20525
Telephone 202-606-5000

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William Aaron
Garnishment of AmeriCorps living allowance
April 19, 1996

Page 2

Moreover, living allowances provided to AmeriCorps participants are not considered wages or earnings; rather, they are intended to cover "the necessary costs of living (including food, housing, and transportation) in the area in which the program is located". 42 U.S.C. § 12594(a)(5). By statute, the AmeriCorps living allowance is keyed to the average annual subsistence allowance provided to VISTA volunteers. For current grantees, the amount of the living allowance closely approximates the U.S. Department of Health and Human Services poverty guideline for a one-person family unit.

In our view, with respect to the federal portion of the living allowance in question, sovereign immunity prohibits garnishment. With respect to the entire living allowance, it is our view that a strong argument can be made that it should not be subject to garnishment since it is a living allowance rather than a wage, that is at or near the poverty line. Because the Corporation is not a party to this action, and because it involves application of state law as well, you should consult your own counsel.

If you have any questions, please contact me at (202) 606-5000, ext. 254 or Associate General Counsel Frank Trinity, ext. 256.

Sincerely,



Terry Russell
General Counsel