# Office of Inspector General
# Corporation for National and Community Service

**EVALUATION OF CORPORATION FOR NATIONAL AND COMMUNITY SERVICE GRANTS**
**NOS. 04EDHNY003 AND 07EDHNY002**

## OIG REPORT 09-11A

Prepared by:

Office of Inspector General
Corporation for National and
Community Service

**This report was issued to Corporation management on June 4, 2009. Under the laws and regulations governing audit follow-up, the Corporation is to make final management decisions on the report's findings and recommendations no later than December 4, 2009 and complete its corrective actions by June 4, 2010. Consequently, the reported findings do not necessarily represent the final resolution of the issues presented.**

Corporation for NATIONAL & COMMUNITY SERVICE

# OFFICE OF INSPECTOR GENERAL

June 4, 2009

Ms. Nicola Goren
Acting Chief Executive Director
Corporation for National and Community Service
1201 New York Avenue, NW
Washington, DC 20525

Re: Report 09-11A, Evaluation of Corporation for National and Community Service Grants Nos. 04EDHNY003 and 07EDHNY002

Dear Ms. Goren:

Enclosed for the action of the Corporation for National and Community Service ("Corporation") are two documents and management comments, which together form the final report. Under the Corporation's audit resolution policy, a final management decision on the finding in this report is due from the Corporation by December 4, 2009. Notice of final action is due by June 4, 2010. If you have questions pertaining to this report, please call Stuart Axenfeld at (202) 606-9360 or me at (202) 606-9390.

Very truly yours,

Gerald Walpin */s/*
Inspector General

Enclosures

cc: Matthew Goldstein, Chancellor of The City University of New York and Chairperson of the Board of Directors of the Research Foundation of The City University of New York
Frank Trinity, General Counsel
Kristin McSwain, Chief of Program Operations
Margaret Rosenberry, Director, Office of Grants Management
Lois Nembhard, Acting Director, AmeriCorps*State and National
William Anderson, Acting Chief Financial Officer
Rocco Gaudio, Deputy Chief Financial Officer, Grants and Field Financial Management
Sherry Blue, Audit Resolution Coordinator

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Corporation for NATIONAL & COMMUNITY SERVICE

# OFFICE OF INSPECTOR GENERAL

June 4, 2009

Mr. Matthew Goldstein
Chancellor of The City University of New York
and Chairperson of the Board of Directors of
the Research Foundation of The City University of New York
535 East 80th Street
New York, NY 10075

Ms. Nicola Goren
Acting Chief Executive Director
Corporation for National and Community Service
1201 New York Avenue, NW
Washington, DC 20525

Re: Report 09-11A, Evaluation of Corporation for National and Community Service Grants Nos. 04EDHNY003 and 07EDHNY002

Dear Chancellor Goldstein and Ms. Goren:

This letter conveys the final report of the finding and recommendation of the Office of Inspector General ("OIG") regarding the Corporation for National and Community Service ("Corporation") Grant Nos. 04EDHNY003 and 07EDHNY002, which it awarded to the Research Foundation for the City University of New York ("RFCUNY").

OIG forwarded its draft finding and recommendation on April 2, 2009, to both RFCUNY and the Corporation to permit each to respond and thus allow OIG to take their responses into account in determining this, OIG's, final finding and recommendation. RFCUNY, by Matthew Goldstein, Chancellor of the City University of New York ("RFCUNY")[1] and Chairperson of RFCUNY, responded by letter dated April 30, 2009.[2] The Corporation responded on May 4, 2009, by letter signed by Nicola Goren, Acting Chief Executive Officer, in reliance on an attached memorandum of the General Counsel, also dated May 4, 2009.[3]

We have carefully considered both Chancellor Goldstein's response and the memorandum by the Corporation's General Counsel. After doing so, we inform you that we are making final the draft finding and recommendation, which we hereby reaffirm, and add to that draft these additional reasons therefor.

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[1] Hereafter, for purposes of this report, we use RFCUNY except where necessary to make clear that we are referring to both at the same time or referring only to CUNY.
[2] The Chancellor's letter is cited in this report as "Chancellor" followed by the respective page.
[3] The Corporation's response is herein cited as "GC" followed by the respective page of the General Counsel's Memorandum.

## Introduction

In his weekly address on April 18, 2009, President Obama prescribed a road map instruction to all parts of the Government which he heads to perform "the painstaking work of examining every program, . . . every dollar of government spending and asking ourselves: Is this program really essential? Are taxpayers getting their money's worth? Can we accomplish our goals more efficiently or effectively some other way?" To accomplish this, he instructed his administration to "scour[] our budget line by line for programs that don't work so we can cut them to make room for ones that do."

While the OIG began its "painstaking work of examining" the RFCUNY Fellows Program, and the Corporation's grants to RFCUNY for that program, before President Obama's instruction, the OIG's inquiry and this final statement of OIG's finding and conclusion implement the President's instructions.

As this final letter report concludes, the RFCUNY program doesn't work as a grantee of AmeriCorps funds because it adds no service to the community which is not already provided by the Fellows Program, without the AmeriCorps education awards which are at the heart of the Corporation's grants to RFCUNY. Therefore, taxpayers are not getting their money's worth, and the Corporation could accomplish its goals more effectively if the funds for these grants were used instead to provide service by AmeriCorps members in communities where the need exists, not in the RFCUNY program, which has already filled the need.

As we were concluding the draft of this letter report, the New York Times (May 11, 2009, p. A19) reported facts which make the OIG's conclusion, that the grant of education awards is unnecessary to ensure that New York has sufficient teachers, even more compelling; in fact, it establishes that education awards are being used to deprive college graduates of teaching jobs they are seeking, but are foreclosed from obtaining, because of taxpayer-financed Fellows who are chosen over the non-taxpayer-financed new teachers.

The Times reported:

"New citywide ban on hiring teachers from outside the school system."

It explained that:

> in an effort to cut costs and avoid teacher lay offs, the Department of Education . . . ordered principals to fill vacancies with internal candidates only. As a result, aspiring teachers at education schools and members of programs like Teach for America - a corps of recent college graduates - and the City's Teaching Fellows - which trains career professionals to become teachers - are scrambling for jobs.

But the New York Department of Education is not planning total elimination of the Fellows Program which costs New York State taxpayers and the Corporation (in education awards and administrative fees) substantial amounts -- the Times reports that the "city still plans to hire about half the usual number of educators from . . . the Teaching Fellows Program." One teacher applicant described this preference for Fellows as "unfair."

This current over-abundance of teacher-applicants underlines that AmeriCorps education awards made pursuant to the RFCUNY grants are not being used to meet an unmet need.

**Procedural Issues Raised by RFCUNY**

Before turning to the merits providing further support for OIG's conclusion, it is necessary to respond to Chancellor Goldstein's objections to procedural aspects of the OIG's report.

At the outset of his letter, Chancellor Goldstein, whom I respect for the leadership he has provided to RFCUNY, questions "the extraordinary and unprecedented nature" of the letter from me, as Inspector General ("IG") for the Corporation, in which I personally communicated and endorsed the report by the OIG Audit staff. I did so because I recognized the impact of the OIG's findings, both on RFCUNY and on the Corporation, to indicate the attention and scrutiny that OIG has given to this report and findings before the decision was made to report them, even in the draft form OIG used to report its findings, which allowed the Corporation and the Grantee the opportunity to respond and attempt to convince OIG that OIG's findings should be changed.

Chancellor Goldstein states that his "response is based on a factual investigation and legal research undertaken at [his] direction by staff at both" RFCUNY and CUNY. I will respond later in this final statement with OIG's position on the merits, but first must reject his objection to OIG's even raising the issue of the propriety of the AmeriCorps grants made to RFCUNY. I regret to state that he has been poorly advised.

Chancellor Goldstein asserts, in this regard, that OIG had no right to challenge the Corporation's provision of grant funds to RFCUNY, because (i) these grants commenced "in 2001 and have been renewed twice" without "the Corporation ever rais[ing] a question about whether these programs were consistent with its statutory purposes," and (ii) the OIG did not raise the issue of the propriety of these grants as a whole in "the issues to be considered" at "the outset" in the "agreed-upon procedures ("AUP") engagement."

Chancellor Goldstein has not been properly informed, concerning his first ground, on the duties of Inspector General as mandated by Congress. An IG's jurisdiction is not limited to fraud; IGs are required to examine the use of Federal funds by the agency involved (here, the Corporation) to ensure that the Federal funds appropriated to that agency are used in accordance with statutory and regulatory mandates and are not wasted, *i.e.*, as applicable here, to ensure that grant funds are spent to create services in the community which, without those funds, would not otherwise have been provided.

The Senate Report, explaining the purpose of the Inspector General Act of 1978, specifies that the Inspector General has the duty to "assume a leadership role in any and all activities which he deems useful to promote economy and efficiency in the administration of programs and operations or prevent and detect . . . waste in such programs and operations." S. Rep. No. 95-1071, at 27 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2702. Continuing, the Report "requires each Inspector . . . General to keep his agency head and the Congress fully and currently informed . . . relative to . . . serious problems, abuses and deficiencies with respect to the administration of his agency's programs and operations, and to recommend corrective action . . . ." *Id.* at 28. Further, OIG's responsibilities include conducting "reviews of program results to determine whether programs or activities meet the objectives established by Congress or the [Agency] in its regulations." *Id.* at 29.

To codify these purposes, the Inspector General Act of 1978, 5 U.S.C. App. 3, § 6(a)(2), authorizes "each Inspector General . . . to make . . . such reports relating to the administration of

the programs and operations of [the Agency] as are, in the judgment of the Inspector General, necessary or desirable." Section 5(d) of the same Act mandates that "[e]ach Inspector General shall report immediately . . . whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations" of the Agency.

Hence, the OIG's responsibility includes overseeing and questioning the Corporation's decisions on how it spends the funds Congress provides to it. That the Corporation has been doing it for eight years without OIG involvement (until now) does not provide immunity for the conduct if it, in fact, involves waste and deficiencies in the Corporation's administration of its programs. I am certain that the Chancellor would not suggest that any other law enforcement agency -- and OIG is a law enforcement agency -- is estopped from halting improper conduct within its jurisdiction merely because both the provider and recipient of funds did not view the use of the funds as improper.

Congress created Inspectors General to oversee and police the agency which is assigned to the Inspector General so that decisions and continuing wasteful conduct by the agency would not be allowed to continue without the spotlight of the IG's scrutiny and rejection. The reality is that, while the OIG has the responsibility to eradicate waste, the limited resources available to OIG precludes its immediate examination of every dollar the Corporation disburses; instead OIG uses a risk-based approach to choose grantees to be audited or reviewed, and following-up on information learned, whether through its hotline or, coincidently, in work of accountants directed to other subjects -- as occurred here.

That leads to the Chancellor's second procedural point, that RFCUNY had no advance notice, before the January 28, 2009, exit conference on the AUP engagement, of OIG's questioning of RFCUNY's use of the grant funds in the program as it operated. The Chancellor does not suggest that it was somehow prejudiced in being able to defend its position on the merits by this admittedly belated notice. And we have been unable even to imagine how RFCUNY was prejudiced in being able to defend its position that its participation in the AmeriCorps program was consistent with legal requirements.

As already noted, OIG's examination into this issue did not occur until after we learned facts in the AUP engagement report, of which OIG had previously been unaware, which caused OIG to do an in-depth examination of the propriety of the grants in the context of statutory and regulatory authorization. It is difficult to accept the premise of the Chancellor's criticism in this regard. Is he suggesting the OIG should turn a blind eye to improper use of taxpayers' money because OIG did not expect to uncover it, but only learned of it in the course of accountants' work? Whether the Chancellor really believes that -- and I doubt that he actually does -- it is axiomatic in the law that unlawful conduct should be halted even if the discovery of it was a happenstance. Even in criminal law, in which the protections for defendants are substantially more stringent than in civil cases, discovery of evidence of a crime in the course of an arrest, even though of a crime different from that for which the arrest is being made, is properly used to prosecute. *United States v. Robinson,* 414 U.S. 218 (1973). *A fortiori*, in this context of reporting on misuse of Federal funds, evidence developed of unexpected misuse is properly used to protect taxpayers' money.

## Relevant Facts

The essence of the relevant facts which formed the basis of OIG's draft findings and recommendation is that the evidence establishes that the RFCUNY Fellows Program successfully operated to place over 3,000 Fellows annually in teaching positions in underserved New York City Schools **without** the need for the Corporation's expenditure of millions of dollars for fees and education awards.

As will be shown below, neither the RFCUNY's nor the Corporation's response has presented any **facts** to question that conclusion or rebut the factual support for that conclusion presented in the OIG draft report; indeed the Chancellor effectively admits that conclusion is correct.

Before we turn to that reality, it is important to discuss the irrelevance of the emotionally sympathetic and bald factual assertions which fill up most of the Chancellor's "Factual Background:" that "New York City Public Schools have long suffered," before the onset of the RFCUNY Fellows Program, "from an undersupply of fully credentialed teachers" which is "one of the most critical needs of the school system" (Chancellor p. 2); that "[b]efore the inception of the [RFCUNY] Fellows Program, existing teacher education programs had failed to meet the need for qualified teachers" (Chancellor p. 3); and that the "Fellows Program is targeted at hard-to-staff subject areas and schools and at promoting teacher quality by expanding the pool of fully credentialed teachers" (*id.*). OIG does not dispute these properly given plaudits to the RFCUNY Fellows Program and in fact applauds that program for meeting what was, **before** the RFCUNY Fellows Program, an unmet need in New York City.

But all of these reasons why the RFCUNY Fellows Program was created to fill that unmet need do not establish that the AmeriCorps' participation, by providing education awards, met that same unmet need which the Fellows Program had already satisfied. To establish that essential prerequisite to validating the AmeriCorps grants would require evidence that the RFCUNY Fellows Program was failing to attract sufficient applicants without the AmeriCorps education awards. Neither the Chancellor nor the Corporation even purports to present any facts to establish that conclusion; indeed, the facts presented by the Chancellor strongly suggest to the contrary.

As the Chancellor states, the "Fellows Program was established as a pilot program in 2000," which recruited 300 teachers, with the only material inducement offered being "the promise of a fully subsidized Master's degree and a full-time teaching job" (Chancellor p. 2) -- the identical incentives for persons to apply as offered to the current day, except without the AmeriCorps education award.[4]

It is appropriate to pause in this recitation of the facts to note that the information provided by both the Chancellor and the Corporation's General Counsel is, at best, confusing on whether the benefit from the education awards in fact goes to the Fellows, and not to the RFCUNY and Board of Education ("BOE")[5] partnership. The Chancellor states that the first year's recruits were "promise[d] . . . a fully subsidized master's degree" (Chancellor p. 2) --

[4] The Chancellor omits mentioning the number of applications obtained in this first year's pilot program, but, given the careful selection process he describes, it is reasonable to assume that the number of applicants was several multiples of the 300 selected.

[5] For purposes of this report we use BOE to refer to both BOE and the NYC Department of Education. While DOE is often cited as "the agency" in the Request for Proposals and in the resulting contract, those documents establish that BOE is the actual contracting party.

meaning that Fellows did not need an AmeriCorps award to pay their master's degree tuition, and that RFCUNY/BOE would be using their resources to enable the Fellows to be free of the tuition liability. It was thus in RFCUNY/BOE's interest to obtain that subsidy from someone else; as the Fellows already had no liability for the tuition, obtaining Federal funds for that tuition was not an added incentive to Fellows insofar as the Master's degree tuition was concerned, although it would be of great benefit to RFCUNY/BOE.

But the Corporation's General Counsel contradicts the Chancellor. The Corporation General Counsel asserts, albeit without any supporting citation, that Fellows do have Master's degree tuition expenses: he states (GC p. 7), "by design, tuition for the required master's degree courses does not become due until the end of the year, enabling participants who successfully complete a year of service to use their education awards toward their tuition expenses." If we accept the Corporation's General Counsel's representation, the education awards would be a gift to all participants to reduce their personal continuing liability for tuition, and would simultaneously benefit RFCUNY by enabling it to receive an immediate payment of $4,725, in each of two years, which otherwise would remain an unpaid account payable for years.

OIG is troubled by this apparent conflict between the Chancellor and the Corporation's General Counsel, particularly as neither even referred to the contract executed by RFCUNY with BOE which appears to govern this issue of Master's degree tuition liability. That current contract, dated June 1, 2007, governing the RFCUNY Fellows Program, in fact, provides for the Board to pay "the full tuition cost" of the Fellows (contract p. 7, ¶ 4 J), and expressly prohibits RFCUNY from charging Fellows any amounts in connection with their obtaining a Master's degree (*id.*, p. 8, ¶ 4S). See also p. 14, ¶ 3.3.5 of the related request for proposals: "Universities may not directly charge the participant [Fellow] for any tuition and/or academic fees."

In contrast to the undisputed fact that the AmeriCorps education award was not needed for the Fellows Program to succeed in the first year, both RFCUNY and the Corporation offer only speculation, factually unsupported conclusory assertions, and claimed inferences that in later years it was needed. *E.g.*, "the development of the partnership between AmeriCorps and the . . . Teaching Fellows Program . . . was critical" (Chancellor p. 2); "without AmeriCorps, it is **doubtful** that the Teaching Fellows Program would be able . . . . " (Chancellor p. 4; emphasis added); "the education awards ***may*** [in] fact serve as a[n] . . . inducement" (Chancellor p. 9; emphasis added). And, the Chancellor concedes that RFCUNY cannot demonstrate that "AmeriCorps funding is <u>essential</u> to recruiting volunteers" (Chancellor p. 9; emphasis added by Chancellor).[6]

[6] The Chancellor also speculates that "education awards can help Teaching Fellows avoid or reduce education debt, which could be a barrier to continuation in the field . . . . " (Chancellor p. 9). The defect in this sentence, however, is not limited to the speculation that any sizeable number of teachers, after investing so much time and energy into becoming teachers and obtaining their Master's degrees, would not continue in the field because of the non-receipt of $9,450 (2 education awards). The premise for the speculation, that "education awards can help" Fellows on their education debt, is a totally truthful statement and the obvious reason why almost all Fellows, after being accepted into the Fellows Program, would automatically accept the invitation to join AmeriCorps with the gift of two education awards for doing nothing beyond what is required in the Fellows Program. But the AmeriCorps program was not created by Congress as a welfare program for struggling teachers; it was created to provide education awards to AmeriCorps members who provide services which, without their AmeriCorps membership, would not otherwise be provided.

It is obvious from the Chancellor's letter that AmeriCorps is not even mentioned in the advertisements to recruit for the Fellows Program. As the Chancellor put it, the "Teaching Fellows are recruited and retained with a media campaign designed to call on their sense of civic and national service" (Chancellor p. 3). His artful suggestion that "[t]hese advertisements are in line with the spirit of an AmeriCorps program," by negative pregnancy, necessarily establishes that AmeriCorps was not even mentioned. Many excellent programs throughout the United States are consistent with the spirit of an AmeriCorps program, but they are independently successful without any subsidy from AmeriCorps. And, in contrast to the admitted absence of AmeriCorps in advertising, the Chancellor's conclusory assertion that "AmeriCorps and the education awards are also featured during recruitment calls" provides no evidentiary support to allow evaluation of when, where and how.

More than three years ago, the Corporation noticed the absence of any cause and effect between AmeriCorps and enrollment in the Fellows Program, and RFCUNY sought to paper over that void. As noted in OIG's draft of its findings and recommendation (p. 6) (but ignored in both the Chancellor's and the Corporation's responses), RFCUNY, in an October 25, 2005, letter in response to a Corporation site visit, stated that it would develop strategies and opportunities for the AmeriCorps connection to be further emphasized. But RFCUNY did not even do that.

However, the Chancellor does provide additional extremely probative facts concerning the absence of any relationship between AmeriCorps and recruitment of Fellows. As he relates the facts and procedural sequence in recruiting Fellows (Chancellor pp. 3-4), using "last year" as his example, 19,200 applications were received. Screening then occurred to "narrow[] the applicant pool to a smaller group whose members are selected for in-person interviews and demonstration lessons" which are used to "narrow[] even further" the applicant group. Then, once admitted into the Fellows Program, the Fellows "enter into an intensive summer 'pre-service' program that includes, among others, the requirements that (i) they pass the challenging New York State-mandated Liberal Arts and Science Test . . . and the Content Specialty Test . . . ; (ii) achieve a 3.0 GPA in their summer college course work, and (iii) interview and accept a teaching position in a high-needs, New York City Public School." All of this is "prior to . . . their enrollment as AmeriCorps members." And their enrollment occurs only because "at the end of the summer pre-service training, Teaching Fellows are all advised on the application process to become AmeriCorps members and obtain the resulting benefits" (Chancellor p. 8) – *i.e.*, the Fellows do not sign to become AmeriCorps members until **after** they have already agreed to be Fellows, finish the summer semester, and are told that all they have to do is sign to become an AmeriCorps member and they will obtain the benefit of an education award, without having to do anything in return that they did not already agree to do as a Fellow.

The only logical conclusion from this sequence involved in recruiting Fellows is that the AmeriCorps membership is irrelevant to the Fellows' decision to apply for and accept a position in the Fellows Program. It makes no sense to suggest that an applicant would have withdrawn his/her interest in the Fellows Program, after going through the Fellows application process, the interview and demonstration lesson, and the "intensive" and "demanding" (Chancellor p. 8) summer program, if the applicant were not given the opportunity to be an AmeriCorps member. It thus reinforces OIG's conclusion, in its Draft Report (p. 6), that RFCUNY "has not provided convincing evidence that AmeriCorps funding is essential to recruiting volunteers" for the Fellows Program, and that "the benefits" from the Fellows Program "are in any way attributable to AmeriCorps activities." Indeed, the facts presented by the Chancellor conclusively establish the contrary.

Significantly, even the Fellows teacher website does not mention the education award benefit, even though, if that was in fact an inducement, it would be the teachers themselves who would be most interested in such fact. That website makes clear that "[e]ach Fellow in the June 2009 program will be responsible for some portion of the cost of his/her Master's degree," which will total "$6,600 toward the cost of the degree." If the AmeriCorps education award was considered to be needed as an inducement to participate in the Fellows Program, this website would have immediately noted that: "Don't be bothered by this charge as you will receive $9,450 in AmeriCorps education awards." No such statement was contained in this very current website description of the Fellows Program.

Apparently, to substitute for the inability to establish any cause and effect between Fellows enrollment and the AmeriCorps membership, the Chancellor points to the fact that "ninety-two percent of the Teaching Fellows have enrolled as AmeriCorps members" (Chancellor p. 3), and the Corporation's General Counsel similarly points to the fact that "more than 90% of participants in the RFCUNY teacher corps program . . . earned education awards and nearly 87% of those education awards have already been used to defray the member's education expenses," which are "figures significantly higher than those for AmeriCorps programs generally" (GC p. 3). Those figures do not prove any cause and effect between the AmeriCorps membership and the enrollment in the Fellows program. Both figures are expected: other than those being ineligible to obtain an education award,[7] most Fellows would obviously sign to join AmeriCorps, knowing that the simple signing would result in no additional responsibilities, but two payments of $4,725 each to pay for tuition. And that 87% of the recipients of an education award used them is of no probative value for two reasons: (i) RFCUNY fixed an almost simultaneous time for the due date of the tuition payment date and the receipt of the education award; and (ii) as long as the Fellow has an education bill due and payable -- whether it be for current Master's degree tuition or for prior college bills or loans -- why wouldn't the Fellow use the education award to pay it? Finally, the Corporation's General Counsel's recitation that the Fellow's percentage of earned education awards and use of them is "significantly higher than those for AmeriCorps programs generally" can only be most generously described as obfuscation.[8] The RFCUNY Fellows Program, unlike most programs to which AmeriCorps members are assigned, is directed totally to teachers who are continuing their studies to obtain a masters degree. See Chancellor p. 10: Teaching Fellows Program "combine[s] teaching with the pursuit of a graduate degree." (p. 10). Thus, Fellows would have an immediate use for the education award. In contrast, most non-professional (non-teaching)

[7] For example, an AmeriCorps member is limited by statute, 42 U.S.C. § 12602(c), to two education awards. Therefore, if the Fellow has already served as an AmeriCorps member and obtained two education awards, the Fellow would gain nothing from enrolling in the AmeriCorps program.

[8] The Chancellor makes a similar argument (Chancellor p. 9), unexplainably concluding from the "more than ninety-five percent" of the Fellows "actually mak[ing] use of" the education awards, as contrasted with the nationwide average of "only about half of . . . AmeriCorps members" using the award, that "these awards are, in fact, operating as intended." This is comparing apples and oranges. As already noted, while the membership in the Fellows Program is composed solely of teachers contemporaneously incurring tuition costs for master's degrees, most non-professional corps AmeriCorps programs do not have that contemporaneous student/volunteer experience, resulting in a much lower usage of education awards. And while the education award does have the corollary hoped-for benefit of inducing further education for recipients, the primary intention of education awards is as a benefit after a member has provided 1700 hours of service in a community which, without AmeriCorps participation, would have remained an unmet need in that community. As discussed herein, that required purpose was not fulfilled by this AmeriCorps program.

AmeriCorps members have not yet attended college,[9] and thus have no immediate need to use the education award, nor is there any certainty that most will thereafter attend college.

The Corporation's General Counsel makes a similar argument, in citing a 2006 AmeriCorps "Current Member Survey" prepared by the Urban Institute as providing evidence of a cause and effect between the education awards and Fellows signing up to teach in underserved schools. In fact, it provides no such link. Some of the questions in the survey logically allow only one answer, which does not shed any light on the cause and effect relationship between joining AmeriCorps and enrolling to teach in the Fellows Program. For example, question 6 asks "to what extent, if at all, did the education award serve as an incentive for joining AmeriCorps?" As joining AmeriCorps neither offered nor required anything different from Fellows in the Fellows Teaching Program, obviously the gift of AmeriCorps education awards on joining AmeriCorps could be the only reason for Fellows to join it, making the 81% affirmative response expected. Significantly, the question did not ask the extent to which the education award served as an incentive for enrolling in the RFCUNY Fellows Program -- the only relevant issue.

Likewise, question 31 irrelevantly asked "to what extent, if at all, did you end up doing what you thought you were going to do when you enrolled in AmeriCorps?" As it is not disputed that all Fellows enrolled in the Fellows Program, under which they performed all their teaching and training responsibilities, and the AmeriCorps membership, signed thereafter, carried no separate job requirements, it is not surprising that 90% answered that they did what they thought they were going to do when they enrolled in AmeriCorps: nothing in addition to what they agreed to do in enrolling in the Fellows Program.

Similarly, question 35a irrelevantly asked "Thinking back to before you enrolled in AmeriCorps, if you knew then what you know now about the service experience, how likely would you have been to enroll in AmeriCorps?" As the facts indisputably establish, Fellows joining AmeriCorps, in return for receiving an education award, had no service experience other than the service experience they had as part of the Fellows Program. Since they were thus receiving $9,450 for doing nothing additional, the 97% affirmative response is a given.

The Fellows' answers to other questions in fact strongly suggests that the members considered this as a Fellows Program, not an AmeriCorps Program. For example, the Corporation properly boasts in the AmeriCorps brochure provided to OIG by General Counsel entitled "AmeriCorps Changing Lives, Changing America" (May 2007), that "80% of [all AmeriCorps] members report they are more likely to participate in community service as a result of their AmeriCorps experience," 72% "of members continue to volunteer after completing their service," and 62.5% of former AmeriCorps members "manage volunteers." The answers by RFCUNY Fellows to the Urban Institute's questions on similar subjects demonstrate that the Fellows did not act as ordinary AmeriCorps members, but as unrelated RFCUNY Fellows: In response to Q. 10, "since joining AmeriCorps, approximately how much of your time have you spent recruiting community volunteers," 68% answered no time, and another 26% answered between 1-10% (which could mean as little as 1%). The question of "how much of your time have you spent directly supervising community volunteers?" (Q. 11) resulted in 90% of the

[9] ABT Associates Inc., under contract to the Corporation, studied PY 1999-2000 AmeriCorps members and prepared its report, Serving Country and Community: A Longitudinal Study of Service in AmeriCorps, Early Findings, December 2004, Updated April 2007. Page 25, Exhibit 3.3, shows that only 29.8 percent of State and National AmeriCorps members had Bachelor's degrees at Enrollment. While the profile of current members may differ, it is informative and likely not dissimilar.

Fellows responding “no time” -- the highest “no time” percentage of all 40 programs polled; contrast that percentage with the 62.5% reported for all AmeriCorps members in that brochure.

In contrast to the Urban Institute’s questions, the AUP auditors asked members questions directly relevant to any cause and effect between the AmeriCorps education awards and enrolling to teach through the Fellows Program. As reported in OIG’s draft finding and recommendation, “Five of the six members contacted during the AUP engagement stated that they were not aware of the AmeriCorps education award when they signed-up for the Fellows Program.” Because the Corporation’s General Counsel (p. 6) understandably questions the impact of those responses due to the small number whom the auditors were able to contact, OIG has expanded the number to be interviewed and the questions to be asked.[10] The highlights of the responses received are as follows:

OIG representatives randomly selected and attempted to contact 109 active, full-time members before finalizing this report. We successfully reached and interviewed by phone 25 members from PY 2008-2009. Of the 25 members, 21 indicated that they were unaware of the AmeriCorps education award prior to enrolling in the Fellows or TOP programs. When these 21 members were asked whether the AmeriCorps award was a moving force in their decision to enroll in the Fellows or TOP programs, all 21 members said no. Most relevant, all 25 of the members responded that they would have signed up for TOP or Fellows programs whether or not the education award was offered. Only three members (a fourth member was unsure) were even aware of the possibility of getting an AmeriCorps education award before enrolling in the teaching position. Including the members interviewed in the AUP engagement (6 members), 26 of 31 members were unaware of the education award until after their enrollment in the alternate teaching program, and one could not recall.

These responses establish that Fellows did not agree to teach as part of the RFCUNY Program because of the education awards.

The lack of relation between the Fellows Program and AmeriCorps is also evidenced in the AUP auditors’ finding that this Fellows Program was not even run as an AmeriCorps program under AmeriCorps rules and regulations. Not only did RFCUNY not comply with the AmeriCorps requirement (AmeriCorps Education Awards Program Special Provisions [2005-06] (“AEAP Provisions”), Section IV.C.2) that timesheets must be signed and dated by each member (as well as by the grantee), but “RFCUNY representatives were not aware that AmeriCorps provisions required members to date timesheets themselves” (AUP Draft Audit Report p. 9).

AEAP Provisions § IV.E.3 requires grantees to conduct an orientation for AmeriCorps members. RFCUNY representatives asserted that this AmeriCorps orientation training was done during the eight week Fellows training program, but could not produce any sign-in sheets or syllabus referring to AmeriCorps training. Relevant to the RFCUNY claim, three of the six AmeriCorps members interviewed by the AUP auditors “stated they did not recall attending an AmeriCorps Program orientation” (AUP Draft Report p. 10).

RFCUNY representatives also admitted that they were unable to establish compliance with the prohibition in 45 C.F.R. § 2520.45 that no more than 10% of member service hours could be spent on fundraising activities (AUP Draft Report p. 10).

[10] The relevant questions asked of the members are appended as Exhibit A to this final letter report.

AEAP Provisions § IV.C.2 “requires that AmeriCorps grantees keep time-and-attendance records for all AmeriCorps members,” and that they “be signed and dated both by the member and by an individual with oversight responsibility for the member” (AUP Draft Report p. 11). While the RFCUNY Program manager and staff signed such timesheets, neither the Program Manager nor his staff had any “first-hand knowledge of member activities,” and thus were unable “to verify member activities or timesheet accuracy” as required by AmeriCorps rules (*id.*)

In our draft letter (p. 5), we noted that the AUP auditors had found that RFCUNY had failed to provide the supervision of AmeriCorps members by RFCUNY program managers, as required in RFCUNY’s application for the 2007 grant. Significantly, neither RFCUNY nor the Corporation disputed this fact. This is another example of RFCUNY’s non-regard of the Fellows as AmeriCorps members, treating them with the more limited supervision given under the Fellows program.

Finally in this list of circumstances which refute any conclusion that the Fellows teachers were induced to become teachers due to the benefits resulting from signing up as AmeriCorps members, the AUP Draft Report (pp 13-14) found that a large number of Fellows in this program, now claimed to be AmeriCorps members, didn’t even sign an enrollment form or AmeriCorps contract until long after they commenced teaching. Indeed, in the 2007-08 program year, 104 of the supposed AmeriCorps members signed their respective enrollment form and contract between 32 to 369 days late, despite the AmeriCorps rule that an individual is enrolled as an AmeriCorps member only upon signing a member contract (AmeriCorps Education Awards Program Special Provisions (2007-2008) Section IV.C.1.a.i) (2007-2008) Section IV.C.1. RFCUNY attempted to excuse this belated enrollment of Fellows in AmeriCorps by stating that “they have a large program with over 3000 members and 30 days is often” an insufficient or unrealistic time frame for a program of that size. Significantly, there is no suggestion that RFCUNY failed to obtain all enrollment documents to be signed by all Fellows before the Fellows commenced their teaching assignments. If, in fact, AmeriCorps membership were a part of the inducements for joining the Fellows Program, the AmeriCorps enrollment would have been part of the package to be signed by an applicant before becoming a Fellow -- but it was not. Moreover, that some Fellows did not sign enrollment forms or a contract to be an AmeriCorps member until as late as 369 days after supposedly commencing teaching means that those Fellows completed their year of teaching before becoming an AmeriCorps member, thus being awarded an education award for services completed while being an RFCUNY Fellow but not an AmeriCorps member.

As already stated, all of these facts further support OIG’s conclusion in the draft report that Fellows did not sign up to meet an unmet need -- that unmet need was met by the enrollment in the Fellows program before and without regard to enrollment in AmeriCorps.

## Controlling Law

We therefore turn to whether the above facts make the Corporation’s grants to RFCUNY permissible under controlling statutes and regulations.

Because the responses from both the Chancellor and the Corporation’s General Counsel effectively ignore the controlling statutes and regulation, which OIG cited in our Draft Finding and Conclusion, it is necessary to repeat the most relevant ones here.

The purpose of AmeriCorps grants must be to “meet the **unmet** . . . needs of the United States” (42 U.S.C. § 12501(b)(1)). A “project” to be so funded must be for “a specific identifiable

service . . . that otherwise would not be done with existing funds" (42 U.S.C. § 12511(20)). As an overriding "nonduplication" prohibition, Congress provided that AmeriCorps funds "shall be used **only for a program that does not duplicate, and is in addition to, an activity" already available** in the locality of such program (42 U.S.C. § 12637(a)(1); emphasis added).

The Corporation reiterated the mandatory nature of this prohibition by adopting a non-duplication regulation (45 C.F.R. § 2540.100), entitled "What restrictions govern the use of Corporation assistance":

> Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program . . . . Corporation assistance will not be provided to a private non-profit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency . . . .

Subsection 100(e). Significantly, neither the Chancellor nor the Corporation's General Counsel attempts to dissect, or even refers to, this Corporation regulation.

The partnership of the New York State Education Department, New York City Department of Education, and RFCUNY established the identical program in 2000, which has been since operating, thus fitting, in *haec verba*, into this prohibition against use of AmeriCorps grants: the Fellows Program, funded by a state agency, was intended to meet the unmet needs of New York City Schools before any provision of AmeriCorps grants to RFCUNY for this program.

Despite these statutory and regulatory enunciations of these prerequisites to a lawful grant, the Chancellor also makes the semantic argument (Chancellor p. 9) that the Act does not use the words in our draft finding that, to receive AmeriCorps grants, it must be "demonstrate[d] that AmeriCorps funding is <u>essential</u> to recruiting volunteers" into "becoming . . . teachers" (emphasis provided by the Chancellor). As already quoted, the Act expressly provides that, for a grant to be provided, the program must be for "a specific identifiable service . . . that otherwise would not be done," and that a grant "shall be used only for a program that does not duplicate, and is in addition to, an activity" already available. And the applicable Corporation regulation mandates that a grant "may not be used to duplicate an activity that is already available . . . ." Among the definitions of "essential" are "necessary," "indispensable," and "requisite." Webster's New Universal Unabridged Dictionary (2d ed.). Clearly, "essential" accurately describes what must or "shall be" and what "may not be" in order to obtain a grant.

Similarly, the Corporation's General Counsel's reference to Congress' view "that the education award would be used as an <u>additional tool</u> to address the [teaching] shortage" (GC p. 6; emphasis in original), does not support the Corporation's position here. Congress did not authorize the use of this "additional tool" in every situation in which a grant application was submitted. Rather, it provided the possibility of granting education awards **if** the facts established that this "additional tool" was needed in order to meet a community's unmet need.

In this regard, the Corporation's General Counsel erroneously accuses the IG of "substituting his opinion for the judgment of Congress" (GC p. 7). As discussed above, in providing the "additional tool" of the education awards, Congress did not legislate that an education award should be granted to every teacher who is accepted as a teacher in an inner city school. If Congress had so intended, it would have said so and provided that neither the "unmet need" nor "nonduplication" provisions applied to grants for inner city schoolteachers. Of

course, Congress has not so legislated, and it is likely that the suggestion that Congress provided for such a subsidy to such teachers would come as an unwelcome surprise to many, if not all, members of Congress.

The Corporation's General Counsel makes his position -- and its fallacy -- clear: close to the conclusion of his memorandum (pp. 7-8), he states that, given "the undisputed success of the RFCUNY program," the AmeriCorps label may be given to it to "allow[] the entirety of the program to be considered 'an AmeriCorps activity'." While this may allow the Corporation to swell its reported number of AmeriCorps members with thousands of teachers already providing services to meet unmet needs -- this program reported the largest number of AmeriCorps members of all existing programs -- it does not add the provision of any services attributable to AmeriCorps and the millions of taxpayers' dollars expended in grants.[11]

The Chancellor correctly asserts that Congress provided for "funding of professional programs on the assumption that the education awards provided by AmeriCorps will, in fact, assist in recruiting teachers . . . to work in underserved localities" (Chancellor p. 10). In providing for professional corps funding with education awards, Congress significantly did not disapply the nonduplication and unmet needs requirements. Thus, Congress' requirement -- no assumption necessary -- was that "education awards provided by AmeriCorps will" be granted only where they will, "in fact, assist in recruiting teachers" who would otherwise (without the education awards) not be available "to work in underserved localities."

Also, the General Counsel's reference (p. 2) to section 122(a)(8) of the National Community Service Act of 1990 is puzzling, particularly in spotlighting the provision in that section that permits salaries in excess of the AmeriCorps' limits on living allowances. OIG's draft did not raise that issue, and it is not involved here. OIG does not dispute that the statute "endorses funding for a professional corps program that recruits and places qualified participants in positions as teachers **in communities with an inadequate number of such professionals**" (emphasis added). The OIG's position, which the Corporation General Counsel thereby ignored, is that AmeriCorps participation cannot fill the unmet need for an adequate number of teachers, when the RFCUNY program has filled that need before any of the Fellows is enrolled in AmeriCorps.

Ignoring the clear language of the regulation, the Chancellor relies first on legislative history -- which has been held not to override the clear language of the statute (*Caminetti v. United States*, 242 U.S. 470, 485 (1917); *United States v. Monsanto*, 491 U.S. 600, 611 (1989)) -- that the legislation was intended to "enhance, support, and build on the vast and effective

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[11] Without identifying the context (until orally asked), the Corporation's General Counsel suggests that OIG's position is the same as one the Corporation rejected nine years ago, "that teaching professionals should earn service hour credit towards an AmeriCorps education award only for uncompensated service, that is, outside of regular teaching duties" (GC p. 8). General Counsel is in error, both in his description of the 9-year old audit report and in misdescribing OIG's totally unrelated position here. As made clear in the body of this Report, OIG does not question the propriety of providing education awards to teachers for teaching services for which teachers' compensation is paid, so long as the facts demonstrate that the teaching services are not already being obtained without the need for the additional expenditure for education awards.

The 9-year old audit, of a grant to the Mississippi Department of Education, first questioned the Corporation's defense of that grant as a "professional corps" program, because it had not been so designated by the Corporation. Second, while the Congressional intent of the statute, providing for professional corps, was to recruit and place new teachers, the education awards were there being awarded to those who were and had been serving as teachers for long periods of time without education awards.

network of service organizations already in place."[12] That recitation of purpose does not eradicate the clear language that duplication of already existing services is not permitted. Recognizing that the non-duplication provision, if applied as it reads, would bar the AmeriCorps grants here, the Chancellor makes the assertion (p. 6) that the non-duplication provision must be ignored if the program does not violate the separate non-displacement provision of the statute. This is not only illogical, but is contrary to basic accepted principles of statutory interpretation that meaning must be given to every provision of a statute. *Inhabitants of Montclair Tp. v. Ramsdell*, 107 U.S. 147, 152 (1883).

The statute contains two separate provisions, subsection (a) "nonduplication," and subsection (b) "nondisplacement," each having a separate purpose: nondisplacement is to prevent an adverse impact on existing employees or employment positions from the use of grant funds, *i.e.,* don't substitute a grant-funded AmeriCorps member in a job which either takes a job away from a current employee, or drops an employable position that was previously filled by an employee from the community, thereby depriving someone else in the community of a job. Nonduplication, as the Corporation's own regulation specifies, prevents use of grant funds "to duplicate an activity that is already available in the locality." 45 C.F.R. §2540.100(e). The Chancellor's reliance on subsection (b)(3) of the nondisplacement provision, entitled "Limitation on Services" does not replace or vitiate the clear prohibition entitled "Nonduplication" in subsection (a). The "nonduplication" prohibition in subsection (a) applies to "program[s]" and program "activity." In contrast, the "nondisplacement" provision in subsection (b) applies to "employee[s]" or employment "positions." Thus, the "nondisplacement" provision in no way overlaps or cancels the entirely separate provision on "nonduplication."

Turning from the absolute prohibition against duplication of already provided service, the Chancellor argues (p. 6) that the "Teaching Fellows Program . . . meets unmet educational needs . . . ." OIG does not dispute that the **Teaching Fellows Program** did meet an unmet need that existed before the Teaching Fellows Program. However, the deciding issue is not whether the Fellows Program met an unmet need, but whether the AmeriCorps program meets an unmet need. No one would dispute that, when a hospital opens in a small town without a hospital, it has met an unmet need in that town; AmeriCorps would not be meeting that unmet need if it decided to provide financing to that hospital in lieu of that hospital using the capital it has. So too, AmeriCorps does not meet any unmet need here merely because it is providing assistance to the Fellows program which has not established a need for that contribution in order to continue. The Chancellor "assumes that the education awards provided by the Act will serve to attract more qualified professionals to underserved localities than would be the case in the absence of such benefits" (Chancellor pp. 6-7). But that assumption, without any factual basis, is no substitute for factual substantiation that AmeriCorps education awards are necessary to attract qualified professionals, particularly in light of (i) the historical record, previously summarized, which established the Program's ability for several years to attract, as the Chancellor describes them (Chancellor p. 3), "fully qualified and capable teachers" without the known inducement of an AmeriCorps education award; and (ii) the New York Times report (p. 2, *supra*) that today there is a surplus of teacher-applicants.

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[12] Such general purpose language would not permit the Corporation to furnish Federal funds, in any manner contrary to law, even if the Corporation in good faith believes it would "enhance, support, and build on . . . service organizations already in place." For example, OIG would expect agreement from the Chancellor and the Corporation that the Corporation could not disburse $6,000 for education awards on the basis that, only with paying that increased amount, could it obtain a desired number of persons to enroll in and support a specific program -- the statute prohibits paying more than $4725. Thus, the deciding issue is not the Corporation's belief as to the benefit if the action is barred by the statute and/or regulation.

The Corporation's General Counsel accurately describes the crucial difference between his position and that of OIG, in footnote 3 on page 3. He dissents from OIG's view that the conceded "requirement that an AmeriCorps program address an 'unmet need'," depends "on whether the RFCUNY program would exist in the absence of AmeriCorps support." The General Counsel's position is that, as long as "New York City has an unmet need for high quality teachers in its public schools," an AmeriCorps contribution to the Fellows Program, which has already met that need without AmeriCorps participation, meets that supposed need even though no additional teachers are thereby obtained. Consider this hypothetical, which can be used to explore that difference in view: a small town has a school that needs 20 additional teachers. In partnership with a nearby university, they solicit applications for the positions, with the town agreeing to pay each teacher $45,000 as salary, and the University, obtaining financing from the State, agrees to provide a Master's degree education for these teachers. Over 200 applications are received, from which 20 very qualified are accepted, and they undergo and pass a stringent summer training program, and are then formally signed up for the teaching positions. At that time, those accepted applicants are informed that, if they sign an application to become an AmeriCorps member, which will require from them no services in addition to what they would be performing as a teacher, they would receive two annual education awards of $4,725 each, which they can use to pay any education debts they have incurred. Over 90% accept and so use the education awards; the number who do not sign up is composed of those who have no education debts and a few who state that they will not accept charity -- money for doing nothing beyond what they already were doing.

This simple hypothetical – a small town replication of the RFCUNY Program -- would not pass muster under controlling statutes and regulations, and most important would not meet the Congressional purpose of providing Federal funds to allow communities to fill a void in their service needs.

In this regard, the Corporation General Counsel (p. 2) artfully writes that "[t]o be eligible for AmeriCorps funding, an applicant organization must assure the Corporation that the program will (1) address, among other things, unmet educational needs . . . and (2) comply with applicable nonduplicate requirements." He then concludes -- and OIG concurs -- that the Fellows Program meets this requirement; but that is not the deciding issue. The issue is whether the provision by AmeriCorps of education awards as an added benefit to already committed Fellows in the RFCUNY Fellows Program results in meeting an unmet need not already met by that Fellows Program, and whether the AmeriCorps addition violates the rule against duplication.

But the defect in the Corporation's General Counsel's position goes deeper in abdicating the Corporation's obligation to determine the merits and propriety of a grant, and not just accept the grantee's say-so. For example, the Corporation's General Counsel's relies (p. 3) on the application filed with the Corporation for an AmeriCorps grant, "describ[ing] the provision of AmeriCorps education awards as critical to attracting and retaining members" and "reflect[ing] the judgments of" the New York State and City beneficiaries of the grant, "that there is a need for financial incentives above and beyond regular teacher salary and benefits to attract and retain highly-qualified teachers," to support his conclusion that the program is proper. This is very troubling as indicating a total abdication of Corporation's management's responsibility to scrutinize grant applications and not simply accept flowery description in applications as gospel. The Corporation's responsibility is to scrutinize all claims of prospective grantees to determine if the **facts** warrant disbursement of Federal funds to that applicant, and not simply accept that applicant's say-so.

Likewise, the Corporation -- and particularly its General Counsel -- has the responsibility to prevent misuse of the Federal funds it is given. Yet, the General Counsel's opinion appears to be directed toward approving misuse to avoid admitting that years of misuse have occurred. He concedes, as he must, the "success" of the RFCUNY Fellows Program "in increasing the number of applicants" so that it has 10 applicants for each position, thus enabling RFCUNY to "recruit[] and retain[] the best-qualified teachers" (GC p. 5). As shown above, all of this success in the number of applications and in obtaining a full complement of well-qualified and diverse teachers was attained without the promise of an education award.

To avoid the impact of these facts, the Corporation General Counsel relies on two facts. First, he states that RFCUNY's application for the grant, which was approved by the Corporation, "clearly informed the Corporation that the program would rigorously screen applicants and admit only a small percentage" (*id.*). But the undisputed success of the Fellows Program without the offer of education awards precludes a finding that Federal funds were needed to create that success.

The second undisputed fact that he sets forth is that "Congress recognized that additional financial incentives **may** be necessary to recruit and place qualified participants" (*id.*; emphasis added). The operative word in that correct statement is the word "may" -- "additional financial incentives **may** be necessary" -- not always, but only when the facts establish that only with the additional Federal funds will the program be successful. The Corporation, to this day, has failed to engage in the required monitoring of this program to create a factual record that those additional Federal funds were required; as shown herein, the facts establish the contrary. Not having done so, the Corporation instead rests, as noted, on the "judgment of the City University of New York" and its related state and City agencies -- *i.e.*, the grantee -- thereby abdicating the Corporation's obligation to scrutinize applications and monitor use of grant funds, by accepting the grantee's say-so.

So too, the Chancellor (p. 10), quotes and relies on the Corporation's instructions to grant applicants, which requires those who "currently operate a community service program and are proposing to make education awards available for those performing service, please describe how the education awards will add value to the program and increase or enhance the program's impact in the community." In fact, that instruction underlines OIG's finding that RFCUNY could receive the grant only if the grant resulted in an addition to what RFCUNY was already furnishing. As we have shown, the facts demonstrate the contrary given that the AmeriCorps membership enrollment occurs only after the Fellows have committed themselves to the Fellows Program. The Chancellor's reliance on an example provided by the Corporation of "improv[ing] the caliber or diversity of members enrolled" does not fulfill this, what he thereby admits is a, prerequisite to obtaining a grant: as the facts establish that the Fellows were chosen before the AmeriCorps enrollment opportunity was provided, it is impossible to conclude that the AmeriCorps education awards increased the caliber of the already chosen Fellows. In any event, aside from his conclusory say-so, the Chancellor does not even attempt to establish that prerequisite.

The Chancellor, apparently recognizing that he can point to no evidence to support his assertion of "value added," instead asserts that the "Corporation apparently found [the] justification convincing" (Chancellor p. 10). While the Corporation, by its General Counsel, in retrospect now appears to accept it, it is clear that the Corporation's program officials who had the front-line responsibility to make this determination, both before the grant award and in monitoring the use of the grant, never did so; the comments at the exit conference evidenced that this issue, first raised by OIG, had not before surfaced for monitoring. But even more, the

Chancellor's assertion that there "is no basis for the IG to second-guess the judgment of the Corporation on this matter," assuming that the Corporation's program officials had made such determination, ignores the OIG's responsibility, as discussed at pp. 3-4, *supra* to do just that.

Finally in this regard, the Corporation's General Counsel (p. 6) makes the alternative argument that, even if the very large application pool, without the education award incentive, allowed for the recruitment of sufficient qualified and diverse teachers, there is "no evidence to question that AmeriCorps benefits support the placement" and retention of those teachers. (See same argument made at GC 7.) There are several defects in this argument. First, it rests on the assertion that such "evidence" cannot be found in the responses that the auditors obtained concerning recruitment.[13] But that ignores the evidence that logic precludes the assumption that, once recruited, they would travel as necessary to New York, go though the rigorous summer training session, and then refuse to be placed in a teaching position -- which was the objective of their application -- and remain with that refusal, unless they received an AmeriCorps education award.

The second defect in the General Counsel's argument is, again, most troubling in describing his view of the Corporation's responsibilities. Essentially, his position is that the grant was properly made because there is no evidence that it was not properly made, and the grantee represented that it was properly made. That turns the Corporation's responsibility on its head: the Corporation is not supposed to be a cypher, endorsing grant applications without its scrutiny, affirmatively to determine that the application truthfully represents the actual facts. It may not simply approve and continue to fund a grant merely because of no evidence to the contrary.[14]

Very truly yours,

Gerald Walpin */s/*
Inspector General

Attachment

[13] Without expressly so stating, the Corporation's General Counsel implies that the sampling done by the auditors was insufficient as it involved responses of five members out of only six polled. The results of a much larger polling discussed at p. 10, vitiates that suggestion.

[14] In contrast to his view that the Corporation must accept a grantee's application on its face absent evidence to the contrary, the Corporation's General Counsel raises questions (p. 6 n. 6) as to his acceptance of the OIG's reference to its auditor's interview of six Fellows, because of the "Inspector General's decision not to share the workpapers" relating to these interviews. This statement suggests that the General Counsel views OIG as his adversary, an unfortunate attitude. As the General Counsel was informed when he made the request, those workpapers are the property of the outside auditing firm and that the general practice is that workpapers would not be made available by an auditing firm until the formal audit report is issued, which will be issued following that audit firm's review of the Corporation's response, only recently received.

## Exhibit A: Relevant Questions Asked of RFCUNY AmeriCorps Members

When in relation to making your decision that you wanted to obtain a teaching position in this program (Fellows/TOP), did you learn of the possibility of receiving an education award?

If on the prior question, the member says he/she learned of the possibility of receiving an AmeriCorps education award only after member made the decision to participate in the teaching program**: would I, therefore, be correct in saying that the education award was not a moving force in your decision to participate in the program?** Yes ☐, it was not a moving force No ☐, it was a moving force.

Would you have rejected the Fellows or TOP programs if you did not have the education award opportunity from AmeriCorps, but did receive the approximately $45,500 in salary as a teacher and the other benefits of the Fellows or TOP program? Yes ☐ No ☐

Would you have accepted the Fellows/TOP position if the education award was not offered? Yes ☐ No ☐

Corporation for NATIONAL & COMMUNITY SERVICE

# OFFICE OF INSPECTOR GENERAL

April 2, 2009

Mr. Eric Newman
Program Director,
Research Foundation of the City University of New York
CUNY, Office of Academic Affairs
535 East 80th Street
New York, NY 10021

Nicola Goren
Acting Chief Executive Officer
Corporation for National and Community Service
1201 New York Avenue, NW, Rm. 10201
Washington, DC 20525

Dear Mr. Newman and Ms. Goren:

This letter conveys the Office of Inspector General's ("OIG") draft of its finding and recommendation regarding the Corporation for National and Community Service ("Corporation") Grant Nos. 04EDHNY003 and 07EDHNY002, which it awarded to the Research Foundation for the City University of New York ("RFCUNY").

**INTRODUCTION**

During a recent agreed-upon-procedures ("AUP") engagement regarding these grants, the OIG became aware of apparent discrepancies between the purposes and execution of the grants and the statutorily permissible use of Federal funds disbursed by the Corporation. Following our meetings with Corporation and RFCUNY officials in January and February 2009, on the subject of these Education Award Program ("EAP") grants to RFCUNY and after considering RFCUNY's responses to our inquiries, we have prepared the finding and recommendation that follows. This letter supplements the draft AUP report, which Cotton & Company prepared.

During the exit conference for the AUP engagement with RFCUNY, on January 28, 2009, we presented our initial concerns and requested a written response that we hoped would alleviate our concerns that the RFCUNY EAP grants were not congruent with the statute and purpose of the Corporation's appropriations and its mission. We received RFCUNY's written response, dated February 10, 2009, a copy of which we forwarded to the Corporation. The RFCUNY response did not alleviate but, in fact, heightened our concern that the grants are merely supplementing local programs that already would or do exist even without Corporation funding and do no more than provide education awards to members who had, prior to becoming an AmeriCorps member, volunteered for this identical community service. Thus, we have

concluded that these grants do not meet the statutory and regulatory requirements that they must fund a service that would otherwise not be provided and that meets a presently unmet need.

## BACKGROUND

**The Grants.** Beginning at least with Program Year 2001-2002 and Grant No. 01EDNNY003, the Corporation has provided several grants to RFCUNY, each of which covered or was expected to cover three program/budget years. These grants provided AmeriCorps-member designations to teachers in the New York City public schools who are participants in the New York City Teaching Fellows Program ("Fellows") and the City University of New York's ("CUNY") Teaching Opportunity Program ("TOP"). These teachers, as AmeriCorps members, had the opportunity to earn education and accrued interest awards, which are funded outside the grants, but through Federal funds that the Corporation obligated at grant award in the National Service Trust ("Trust"). Since that 2001-2002 grant, the Corporation has awarded two more, Grants Nos. 04EDHNY003 and 07EDHNY002, with funds totaling $4,208,000 covering 5 budget years and which provided for 14,700 member service years ("MSY"), which include 14,300 full-time and 800 half-time members. Those 2004 and 2007 grants are the subject of the agreed-upon procedures engagement performed for the OIG by Cotton and Company. Associated with these two grants are potential and actual obligations/liabilities of the Trust, *i.e.*, as much as $69.5 million for education awards that could be earned by the members. The Corporation has informed the OIG that it had paid accrued interest payments, totaling about $917,000, and education awards of about $40 million from the Trust, as of March 3, 2009.

RFCUNY, in executing the grants, recruited its AmeriCorps members from graduate students whom it had already recruited as Fellows for the same purpose as the grant. The timing for recruitment of TOP teachers into AmeriCorps may be different. In general, Fellows and TOP recruits receive a starting salary of about $45,530 per year, plus employee benefits and tuition, while pursuing a professional teaching certification by attending graduate courses and teaching in New York City public schools.[1] Corporation funds do not pay the salary and benefits or the tuition for the education required of Fellows and TOP teachers. Those Fellows and TOP teachers who become AmeriCorps members obtain AmeriCorps service hours for the same hours for which they are compensated for teaching, for the hours attending training, the time required to take graduate classes, and for other activities. Usually, these AmeriCorps members earn full education and accrued interest awards because of the many hours involved in teaching and attending graduate courses that are required activities of Fellows and TOP.

The AmeriCorps Program is not a single homogeneous program at RFCUNY and indeed incorporates at least two different programs, Fellows and TOP, to provide alternative paths to becoming fully certified teachers in New York City's schools. However, as shown in the table of statistics that follows, the programs accept only a small number of the applicants for those programs.

[1] The Fellows Program states, "During their time in the Fellowship, Fellows are certified under a Transitional B certificate issued by the state. This certificate is valid for up to three years…. Upon completion of the Master's program … [and after] teaching for three years (including their time in Fellowship), Fellows may apply for Professional certification." Unlike Fellows, TOP candidates may already have a New York State teaching certificate in certain instances.

**Table of Statistics**

| Program/Description | Applicants | Started Teaching | Selection Rate | Source |
|---|---|---|---|---|
| Fellows **(2000-2008)** | 134,601 | 13,523 | 10% | RFCUNY |
| TOP **(2001-2008**) | 2,369 | 863 | 36% | RFCUNY |
| | **136,970** | **14,386** | **10.5%** | |

**Corporation Authorization and Statutory Authority.** The National and Community Service Trust Act of 1993, as amended, and as specified below, provides for AmeriCorps grants for service programs that do not duplicate local programs, but, rather, address unmet needs. It permits use of Federal funds for AmeriCorps grants to expand and strengthen existing service programs that have visible benefits for the participants and the community. The Act emphasizes this requirement by providing that AmeriCorps projects must result in a specific identifiable service or improvement that otherwise would not be done with existing funds, and prohibits duplication of projects already carried on in the community.

More specifically:

42 U.S.C. § 12501. **Findings and purpose**

**(a) Findings**

The Congress finds the following:

(1) Throughout the United States, there are pressing **unmet** human, educational, environmental, and public safety needs.

* * *

(5) Nonprofit organizations, local governments, States, and the Federal Government are already supporting a wide variety of national service programs that deliver needed services in a cost-effective manner.

* * *

**(b) Purpose**

It is the purpose of this chapter to--

(1) meet the **unmet** human, educational, environmental, and public safety needs of the United States, without displacing existing works;

* * *

(5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;

(6) **expand** and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and community;

(7) **build on** the existing organizational service infrastructure of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens; and

(8) provide tangible benefits to the communities in which national service is performed. **[Emphasis Added]**

42 U.S.C. § 12511. **Definitions**
For purposes of this subchapter:

* * *

(20) The term "project" means an activity, carried out through a program that receives assistance under this subchapter**, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds**, and that does not duplicate the routine services or functions of the employer to whom participants are assigned. **[Emphasis added]**

42 U.S.C. § 12572. **Types of national service programs eligible for program assistance**

**(a) Eligible national service programs**

[T]hese national service programs may include the following types of national service programs:

* * *

(8) A professional corps program that recruits and places qualified participants in positions –

(A) as teachers … providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;

(B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and

(C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than national service educational award under division D of this subchapter) of the participants.

42 U.S.C. 12637. **Nonduplication and nondisplacement**

(a) Nonduplication

(1) In general

Assistance provided under this subchapter shall be used **only for a program that does not duplicate, and is in addition to**, an activity otherwise available in the locality of such program.

(2) Private nonprofit entity

Assistance made available under this subchapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) of this section are met. **[Emphasis added]**

**EVALUATION AND FINDING**

The finding expressed herein goes beyond the findings presented in the AUP draft report, which states, "… our compliance findings when taken as a whole indicate pervasive problems of eligibility, timekeeping, and documentation." The OIG believes that these pervasive problems are directly related to the grantee's reliance upon the existing processes in place for pre-existing non-AmeriCorps programs, *i.e*., Fellows and TOP. The processes relied upon are contrary to RFCUNY's grant application that indicated how it would provide oversight for the AmeriCorps program and members. In its application for the 2007 grant, RFCUNY stated on page 16:

> As for supervision, our program members will be supervised by both their school supervisor, usually an assistant principal, and by our program managers, the AmeriCorps site supervisors who sign the timesheets. These supervisors receive annual training on AmeriCorps guidelines and additional training as needed. They also work in the same office as our AmeriCorps staff, enabling them to confer with our staff regularly.

Our recent engagement found that the onsite supervisors were not always aware that their Fellow or TOP teacher was also an AmeriCorps member. Two of five onsite supervisors interviewed were unaware that their respective teaching Fellow was an AmeriCorps member, and none of the supervisors had access to the member contract and had knowledge of its contents, including prohibited activities.

Onsite supervisors also did not sign AmeriCorps timesheets. The process in place provided for one individual in the central AmeriCorps office, who had no knowledge of members' service, to sign all of the thousands of timesheets. The processes actually in place were not as described in RFCUNY's grant application.

In addition, RFCUNY did not comply with AmeriCorps program requirements for criminal background checks. During and because of the AUP engagement, RFCUNY requested a

waiver to rely upon the criminal background checks of the New York Department of Education. Further, RFCUNY had no plans to comply with requirements for member evaluations although Corporation waivers exempting EAP grantees from the requirement to do member evaluations had expired.

These problems in the RFCUNY program show, in our opinion, that no real AmeriCorps program was in place and that its efforts were mainly devoted to "papering the files" in an attempt to meet the documentation requirements. In some instances, for example, members did not turn in a single timesheet until after the period of service was completed.

Separate and apart from the deficiencies in program operations, we have concluded that RFCUNY is, in fact, operating an impermissible AmeriCorps program. While the Fellows and TOP programs appear to contribute substantially to meeting a community need for teachers, the AmeriCorps aspects of the program merely support an existing activity that is already adequately funded in amounts sufficient to attract recruits to become qualified teachers. RFCUNY's response has not provided convincing evidence that demonstrates that AmeriCorps funding is essential to recruiting volunteers into the alternative paths to becoming professional certified teachers in New York City's public schools or that the benefits, while significant, are in any way attributable to AmeriCorps activities.

The following points support our conclusion that RFCUNY's program is, in fact, not a valid AmeriCorps program:

- RFCUNY has not demonstrated that its grants **result in a specific identifiable service or improvement that otherwise would not be done with existing funds** [*See* 42 U.S.C. § 12511.(20)].

- The program does not expand volunteerism. Five of the six members contacted during the AUP engagement stated that they were not aware of the AmeriCorps education Award when they signed up for the Fellows Program. The Fellows website was initially silent on AmeriCorps and its benefits as an inducement to become an AmeriCorps member to those who had not yet signed up as a Fellow. Therefore, the education award and accrued interest awards played no part in encouraging them to volunteer.

- In an October 25, 2005, letter in response to a Corporation site visit, RFCUNY stated that:

    1. It would create tools and monitoring devices to insure that all Member files are maintained with the highest levels of diligence and care.
    2. The Program Manager is in the midst of developing a manual on the nuances of processing the enrollment packets, exit forms, timesheets, and file maintenance. The manual is expected to be completed by the beginning of the new calendar year.
    3. It would develop strategies and opportunities for the AmeriCorps connection to be further emphasized.

  None of these actions stated in the letter to the Corporation was completed.

- The RFCUNY grant is inconsistent with the statutory purpose of the national service laws because the activity that is performed by the Fellows in New York City would occur

regardless of the AmeriCorps grant, and therefore the program meets no unmet human need.

- The City of New York's Board of Education awarded RFCUNY/CUNY a $61 million contract (over five years) to fund the tuition of Fellows' required education to become a teacher. In addition, the school system pays each Fellow and TOP teacher approximately $45,530 per year plus employee benefits to teach in the City's public schools. Without evidence from RFCUNY to the contrary, we believe these incentives are adequate in themselves to attract sufficient numbers of Fellows into the alternative path to becoming a teacher. Indeed, RFCUNY provided information, as shown previously in the table of statistics, that only 10.5 percent of the nearly 137,000 applicants are accepted into Fellows and TOP, establishing both that any AmeriCorps' monetary incentives are not needed to obtain the quota of Fellows -- indeed multiples of the number acceptable are waiting in the wings. Thus, the AmeriCorps grants are duplicative and unnecessary to attract teachers into alternative paths to teacher certification. The grants are, therefore, an unnecessary expense to the Corporation.

  Pursuant to:

  > 45 C.F.R. § 2540.100, *What restrictions govern the use of Corporation assistance*?(e) *Nonduplication*: Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

  This restriction applies to RFCUNY, which is a private, not-for-profit, educational corporation.

- The Inspector General presented our concerns to RFCUNY at the exit conference on January 28, 2009. RFCUNY responded in a February 10, 2009, letter to the OIG. RFCUNY stated that AmeriCorps has provided indispensable help in turning the Fellows into a significant and reliable source of fully qualified and capable teachers for New York's highest need schools, and that financial incentives would be important for defraying the associated educational costs, if the most talented candidates were to be attracted to teaching.

  RFCUNY's response primarily addressed the benefit of the Fellows and TOP programs and did not provide evidence that the AmeriCorps program provided any additional value. The interviews conducted during the AUP engagement found that the AmeriCorps members were not aware of the AmeriCorps education award until after they had applied to become Fellows, which means the award offered no incentive to become a teacher. The full-time education award is $4,725, representing far less than 10 percent of the annual salary, tuition, and employee benefits that these Fellows received. We therefore believe that the grants do not meet an unmet need and that they duplicate an activity that was already available in New York City.

**CONCLUSION AND RECOMMENDATION**

The Corporation promotes an ethic of service opportunities for Americans to engage in service that fosters civic responsibility, strengthens communities, and provides educational opportunities for those who make a commitment to service, fostering within them an ethic of civic responsibility.

We conclude that the AmeriCorps grant was merely 'icing on the cake' for a program that already existed and that RFCUNY was not conducting an AmeriCorps program.

Indicative of the RFCUNY recognition that the AmeriCorps facet of the program was not needed to attract teachers to the program was a sudden change in the Fellows website after the January meeting at which we first voiced our concerns. We saw that the Fellows website, after RFCUNY initially responded to our communication of our concerns about the program, in February 2009, added in its Program Overview, a new sentence, "Conditional upon funding and grant approval, Fellows may also be eligible for AmeriCorps Education Awards." That RFCUNY suddenly added that sentence after we had raised the issue of the non-use of the AmeriCorps membership to induce applicants demonstrates RFCUNY's recognition that this lack of inducement puts its program into question. Belatedly adding the sentence does not fill the void.

The costs of the two grants, including costs to the National Service Trust Fund, could exceed $75 million for currently authorized MSYs. If a third budget year is awarded in amounts and numbers like those for years one and two for the 2007 grant, an additional 3,600 MSYs will substantially increase costs to the Corporation amounting to over $17 million in obligations to the Trust alone (3600 members X $4,725).

**Recommendation:** We recommend the Corporation terminate the grants and recover education awards and accrued interest awards paid, about $40 million and $.9 million, respectfully, and all grant costs, about $4.2 million, and any other amounts paid prior to termination.[2]

**RFCUNY's Response:**

**Corporation's Response:**

**OIG's Comments:**

Very truly yours,

Gerald Walpin */s/*
Inspector General

[2] This recommendation is made in conjunction with and as a supplement to the recommendations in the AUP report that the Education Awards be disallowed.

The City University of New York

The Chancellor

**OVERNIGHT MAIL**

April 30, 2009

Mr. Gerald Walpin
Inspector General
Corporation for National & Community Service
1201 New York Avenue
Suite 830
Washington, DC 20525

Dear Mr. Walpin:

I am the Chancellor of the City University of New York ("CUNY" or the "University") and Chairperson of the Board of Directors of the Research Foundation of The City University of New York ("RFCUNY"). I have received a copy of two documents sent by you on April 2, 2009: (1) the draft report on the Agreed-Upon Procedures for the Corporation for National and Community Service (the "Corporation") Education Award Program Grants Awarded to RFCUNY (the "Draft Report") and (2) the Inspector General's Letter to RFCUNY and the Corporation (the "IG's Letter"). The Program Director for the grants in question will respond separately to the Draft Report. I am writing personally to respond to the IG's Letter because of the extraordinary and unprecedented nature of its contents. My response is based on a factual investigation and legal research undertaken at my direction by staff at both RFCUNY and the University.

The IG's Letter concludes that the Education Award Program ("EAP") Grants made by AmeriCorps to RFCUNY are inconsistent with the statutory provisions governing the Corporation's mission and the purpose of its funding. It further recommends that the Corporation should terminate those grants and recover all education awards and accrued interest awards paid and all grant costs in an amount in excess of $45 million, and possibly in excess of $75 million. For the reasons set forth below, that conclusion is not supported by the language or history of the statute or the facts relating to RFCUNY's execution of the program. Nor is there any legal basis for the recovery of such sums.

At the outset, I wish to express my surprise at the IG's Letter. These EAP Grants were first awarded to RFCUNY in 2001 and have been renewed twice. RFCUNY, in partnership with the New York City Department of Education ("NYC DOE"), has executed the Teaching Fellows Program and the University's much smaller Teaching Opportunity Program as described in the grant applications. At no point during the past eight years has any representative of the Corporation ever raised a question about whether these programs were consistent with its statutory purposes. Indeed, if the Corporation had had any doubts on this score, it would not have funded them in the first place or would have terminated them. Instead, the Corporation renewed the grants in 2004 and again in 2007. Moreover, it is my understanding, that the Corporation and Congress regard these professional corps programs as very successful and a high priority for further funding. To be sure, there are some administrative and recordkeeping issues raised by the Draft

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Report that need to be addressed and that RFCUNY will address. However, none of these affect the core purpose of the programs. In short, the IG's letter is a challenge to the legality of the Corporation's decision to fund and to continue funding these programs (and other similar programs such as Teach for America), not to anything that RFCUNY has done or not done. As such, it seems inappropriate to place on RFCUNY the burden of justifying the legality of the Corporation's actions and to recommend the recovery of funds spent in accordance with the Corporation's awards to RFCUNY. Nevertheless, I do not want the IG's letter to stand unrebutted until such time as the Corporation takes up this matter. Accordingly, I will answer each of the points raised in the IG's letter.

I also want to state RFCUNY's objection to the procedures followed by the IG. The IG's Letter followed an agreed-upon-procedures ("AUP") engagement regarding these grants. At the outset of that engagement, the parties agreed to and set forth in writing the issues to be considered. The issue of whether the purposes and execution of the grants were consistent with the statute governing the Corporation was not included. As the IG's Letter acknowledges, that issue was not raised until the exit conference on January 28, 2009, several months after the engagement began. It seems rather late in the engagement for such a critical issue to be raised, without prior notice, especially when the issue relates not to the AUP engagement itself, but to an interpretation of law.

In any event, I shall proceed to the respond to conclusions and recommendations contained in the IG's Letter.

## FACTUAL BACKGROUND

The New York City Teaching Fellows Program was established as a pilot program in 2000 as a result of collaboration between CUNY, NYC DOE and the New York State Education Department (NYSED). This pilot placed a small cohort of New York City Teaching Fellows into an intensive, summer semester of education course work. Those individuals who successfully completed this intensive experience were granted alternative certification by the NYSED and allowed to teach full-time in underserved schools as long as they remained enrolled in a CUNY teacher education program leading to a Master's degree in the content area of the certification.

The pilot program's first cohort was recruited with the promise of a fully subsidized Master's degree and a full-time teaching job. The pilot proved to be successful in opening a new pipeline of certified teachers for the teaching profession in New York City. However, the need for certified teachers in the New York City public school system was far greater than the 300 teachers produced by this initial pilot. The lack of qualified and certified teacher in NYC public schools was at such a crisis point that the Teaching Fellows Program was called upon to scale-up immediately to meet this need and tripled in size the following year. The development of the partnership between AmeriCorps and the New York City Teaching Fellows Program addressed this staffing crisis and was critical in supporting this scale-up.

Evidence of the unmet need for certified teachers is provided by information collected by the NYC DOE Office of Teacher Recruitment and Quality. The New York City public schools have long suffered from an undersupply of fully credentialed teachers and many educational experts have identified this as one of the most critical needs of the school system. The supply problem has been particularly acute in schools serving high-poverty neighborhoods, including those in the Bronx, Upper Manhattan, and Brooklyn. In 2000, 60% of the 9,000 teachers hired in the New York City school district held only emergency credentials.

Seventeen percent of all teachers lacked full credentials and were concentrated in critical fields, including science (35%), mathematics (23%), special education (22%), and bilingual education (30%). The chronic, and severe, shortage of credentialed teachers hindered school improvement plans and efforts to create educational equity across the district.

Before the inception of the New York City Teaching Fellows Program, existing teacher education programs had failed to meet this need for qualified teachers. The Teaching Fellows Program is targeted at hard-to-staff subject areas and schools and at promoting teacher quality by expanding the pool of fully credentialed teachers. Ninety percent of all New York City Teaching Fellows teach in subject areas that have shortages and work in hard-to-staff schools.

AmeriCorps has provided indispensable help in turning the Teaching Fellows Program into a significant and reliable source of fully qualified and capable teachers for New York City's highest need schools. It was recognized from the beginning that it was not enough to offer a more intensive, alternate, route to qualifying as a teacher; financial incentives would be important for defraying the associated educational costs in order to attract the most talented candidates to teaching.

The AmeriCorps and New York City Teaching Fellows partnership has been a striking success. Since 2005 ninety-two percent of the Teaching Fellows have also enrolled as AmeriCorps members. Today, one out of nine certified teachers in the New York City public school system came through the Teaching Fellows Program.

The financial incentives offered through AmeriCorps are critical for attracting the best candidates and in maintaining tough admissions standards. Indeed, the NYSED has consistently identified financial incentives as one of four key strategies for addressing the teacher shortage and ensuring that school systems can compete for talented individuals, both with other professions and with other states (www. Nysed.gov, 2008). The New York City Teaching Fellows Program recruits college graduates who have not had any prior experience as professional teachers. Seventy percent of the Teaching Fellows are career changers who likely incur a salary decrease when switching to a career in teaching. Forty four percent of the Teaching Fellows are between the ages 21-24, and an additional twenty-nine percent are between the ages of 25-29; both groups are likely to enter the program with outstanding student loans.

The New York City Teaching Fellows are recruited and retained with a media campaign designed to call on their sense of civic and national service in addressing this vital need. Our advertisements permeate the New York City subways and are designed to reach career changers with slogans such as, "your most important clients will carry backpacks, not briefcases' and "no one ever goes back 10 years later to thank a middle manager." These advertisements are in line with the spirit of an AmeriCorps program that asks citizens to serve their country, often at the sacrifice of greater financial rewards in other professional fields. AmeriCorps and the educational awards are also featured during recruitment calls to prospective Teaching Fellows. Most importantly, the educational awards allow us to attract and retain the most qualified and diverse applicant pool.

While it is true that the New York City Teaching Fellows received nearly 19,200 applications last year from across the nation, only fifteen percent of those applicants made it through our rigorous vetting process, which includes a lengthy application, transcripts of all college work, and two essays. All materials are screened by a team comprised of experts in the field. This is only the first step in narrowing the applicant pool to a smaller group whose members are selected for in-person interviews and demonstration lessons.

As a result of this interview and demonstration lesson, the applicant group is narrowed even further. This rigorous application and selection process is essential as research shows that teacher quality is the biggest single determinant of student achievement, especially for children from poverty who rely on the public schools to give them the opportunity to gain the skills and knowledge necessary to be successful and productive adults.

Once admitted, the New York City Teaching Fellows enter into an intensive summer "pre-service" program that includes, among others, the requirements that (i) they pass the challenging New York State-mandated Liberal Arts and Science Test (LAST) and the Content Specialty Test (CST); (ii) achieve a 3.0 GPA in their summer college coursework; and (iii) interview and accept a teaching position in a high-needs, New York City public school.

RFCUNY calls this first summer semester "pre-service" in its materials because it is prior to the hiring of the Teaching Fellows as public school teachers and their enrollment as AmeriCorps members.

Upon acceptance into the pre-service semester, information about AmeriCorps is provided to all New York City Teaching Fellow. They receive a personalized web site, MyNYCTF, with an AmeriCorps page through which they can access all pertinent AmeriCorps information. Once the Teaching Fellows have passed their pre-service, summer semester, they receive an AmeriCorps orientation as part of the mid-August ceremonies that celebrate their impressive achievement and success. The call to service is a constant theme throughout these ceremonies and AmeriCorps orientations.

As part of its recruitment efforts, RFCUNY "markets" the AmeriCorps Education Awards as a way for the Teaching Fellows to afford this call to service in New York City. The starting salary of $45,530 is better than it used to be, but in New York City it does not go far. The Teaching Fellows rely on AmeriCorps education awards to help repay student loans and cover new educational expenses, thereby enabling them to save their salaries for meeting the very high cost of living in New York City.

Without AmeriCorps, it is doubtful that the Teaching Fellows Program would be able to recruit as many highly qualified candidates to come and teach in New York City. The lack of financial incentives would also hamper its ability to recruit from the most diverse pool of candidates. Diversity is one of our major goals. RFCUNY listed increased diversity as a targeted goal in our 2007 AmeriCorps reapplication, and it met and surpassed the targeted percentage goal in 2007 and in 2008.

Hence the partnership with AmeriCorps is vital to the Teaching Fellows Program by enabling it to offer education awards to those candidates who successfully make it through the rigorous application and vetting process, complete the intensive, pre-service summer program, and pass the NYSED required teacher certification exams. These talented individuals have formed the heart of this new program serving hundreds of thousands of students in high need schools and neighborhoods of New York City.

## APPLICABLE LAW

The National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993 (hereinafter referred to collectively as the "Act")[1] governs the Teaching Fellows Program.

[1] 42 U.S.C. §§12501 *et seq.*

Its purposes include "meet[ing] the unmet . . . educational . . . needs of the United States, without displacing existing workers"[2] and "expand[ing] and strengthen[ing] existing service programs with demonstrated experience in providing service opportunities with visible benefits to the participants and community."[3]

The legislative history demonstrates the extent to which Congress expected assisted programs to expand and strengthen existing programs: "The national service program will enhance, support, and build on the vast and effective network of service organizations already in place in American communities. Relying on existing structures, resources and experience is absolutely essential in the pursuit of economy and efficiency. It is equally essential to maintaining the self-starting spirit, the pluralism, and the adaptation to local conditions that have always been the basis for creative response to community needs by local government."[4]

Among the types of service programs eligible for assistance is a "professional corps program that recruits and places qualified participants in positions – (A) as teachers . . . providing service to meet educational . . . needs in communities with an inadequate number of such professionals."[5] Such a program must be sponsored "by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants."[6]

The Act also contains a provision prohibiting the duplication of services and displacement of workers.[7] The nonduplication provision states as a general rule: "Assistance provided under this subchapter shall be used only for a program that does not duplicate, and is in addition to, an activity in the locality of such program."[8] It further states: "Assistance made available under this subchapter shall not be provided to a private nonprofit entity to conduct activities provided by a State or local government agency that such entity resides in unless the requirements of subsection (b) of this section are met."[9]

Subsection (b) contains the nondisplacement provision. It begins by stating the following general rule: "An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use of such employer of a participant in a program receiving assistance under the subchapter."[10] It goes on to make this prohibition more explicit, including a

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[2] Id. at §12501(b)(1).

[3] Id. at §12501(b)(6).

[4] Id. at 36.

[5] Id. at §12572(a)(8)(A).

[6] Id. at §1257(a)(8)(C).

[7] Id. at §12637.

[8] Id. at §12637(a)(1).

[9] Id. at §12637(a)(2).

[10] Id. at §12637(b)(1).

prohibition on the "duplication of services" which states: "A participant in any program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee."[11] Thus, the nonduplication and nondisplacement provisions of the Act are not separate prohibitions; they are interconnected by the very structure of the Act. In the case of a program conducted by a nonprofit entity such as RFCUNY, the Act appears to permit duplication as long as there is compliance with the nondisplacement provision. More generally, the two provisions represent the flip sides of the same goal of preventing assisted programs from displacing workers.

This is also made clear in the legislative history of the Act, which states: "The National and Community Service Act strongly emphasizes the creation of meaningful opportunities for participants to provide services that would not otherwise be provided. Only in this way can we ensure that regular employees are not displaced."[12] Thus, the nonduplication provision must be interpreted in light of its purpose in preventing displacement of workers. Although the Act requires that a program satisfy an unmet need, it clearly contemplates the funding of an existing program designed to achieve that goal and does not require that such funding be indispensable to the existence of the program.

## ARGUMENT

The Teaching Fellows Program fully complies with the statutory requirements of the Act. It meets unmet educational needs by recruiting, training and certifying highly qualified teachers for New York City's public school system, especially in those schools and classrooms where it is hardest to find and place such teachers. It does so without displacing any existing workers or duplicating an activity otherwise available in a locality. Rather, as specifically contemplated by the Act, the grants have expanded and strengthened an existing service program. That program fits perfectly within the model of a professional corps program, by recruiting and placing teachers to meet educational needs in communities with an inadequate number of such professionals, with the locality paying 100% of the salaries and benefits of the participants and the AmeriCorps grants providing for the costs of administration and for the education awards to the participants for their professional education.

The IG's letter concludes that the grants to the Teaching Fellows Program are not authorized by the Act because they were "merely 'icing on the cake' for a program that already existed." That language, while colorful, is not found anywhere in the Act and does not reflect the actual requirements contained therein. The nonduplication provision does not require, as the IG would have it, that no program is eligible for AmeriCorps funding unless there is proof that such funding is "essential" to recruiting volunteers. That interpretation would involve a wholesale rejection of the Act's approval of assistance designed to strengthen and expand existing programs, particularly using the professional corps model, which assumes

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[11] Id. at §12637(b)(3)(a).

[12] S. Rep. No. 101-76 at 35 (Oct. 27, 1989) (emphasis added). The IG's Letter also cites the definition of "project" as "an activity, carried out through a program that receives assistance under this subchapter, that results in a specific service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned." That language is nothing more than a restatement of the nonduplication and nondisplacement provisions discussed above.

correctly that the education awards provided by the Act will serve to attract more qualified professionals to underserved localities than would be the case in the absence of such benefits.

The conclusion in the IG's Letter is thus based on a fundamentally incorrect interpretation of the Act. Because of that error of law, the factual predicates for the IG's conclusion are irrelevant. As set forth below, they are also erroneous.

1. *The large number of applicants for Teaching Fellow positions does not support the conclusion that there is not an unmet need.*

The IG's Letter correctly notes that applications for Teaching Fellow positions far outnumber the positions available. This is a highly selective program. It was planned to be so. In its 2004 proposal to AmeriCorps, RFCUNY wrote that it anticipated that only about a fifth of applicants would be accepted into the program. This has been a consistent feature of the program. In its 2007 proposal, RFCUNY reiterated that the program was one of the most selective in the country. AmeriCorps has never objected to this selectivity.

RFCUNY is proud to operate a program that selects only the most talented and suitable candidates. It is a signal achievement of the program that it has drawn highly qualified candidates to teaching positions in high-poverty schools that historically have been disproportionately staffed with temporary and uncertified teachers. Indeed, ninety-two percent of 2007 Fellows work in Title I schools, which are federally-designated as serving the highest concentration of students from poor families.[13] Researchers have found that Teaching Fellows have entered the schools with significantly higher academic qualifications than their predecessors in high-poverty schools, a change that has already benefited the City's students.[14]

The IG's Letter argues that the large pool of applicants is evidence that there is no longer an unmet need in New York City's schools. A large pool is not evidence, however, that most of its members would meet the stringent standards required to assume challenging teaching responsibilities. Fellows undergo a very careful selection process that includes submitting essays, a personal interview, drafting of a sample document on-site, and conducting a demonstration lesson. The rigorous selection procedure insures that only applicants with the character, academic skills, and motivation to take on high-needs classrooms actually enter the schools.

The contention in the IG's Letter that the large number of applications for the Teaching Fellows Program demonstrates that there is no unmet need is also contradicted by the legislative history of the recently enacted Edward M. Kennedy Serve America Act, which among other things directs the Corporation to develop a plan to increase AmeriCorps positions to 250,000 by 2017 and reauthorizes the funding of professional corps programs. In passing the Act, Congress recognized the efforts of the thousands of volunteers educating young people in poor and rural schools through the Teach for America Program.[15]

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[13] The New Teacher Project. 2009. "A Growing Force: More than 8,300 NYC Teaching Fellows." www.tntp.org/outimpact/impact_nyc.html. Retrieved April 12, 2009.

[14] Boyd, Donald, Hamilton Lankford, Susanna Loeb, Joanna Rockoff, and James Wyckoff. 2008. "The Narrowing Gap in New York City Teacher Qualifications and Its Implications for Student Achievement in High-Poverty Schools." *Journal of Policy Analysis and Management*, Vol. 27, No. 4:793-818.

[15] 155 CONG. REC. S3636-01 (daily ed. March 24, 2009) (statement of Sen. Akaka).

That the Teach for America Program received 35,000 applicants for 4,000 slots was viewed by Congress as a positive sign that volunteers are taking advantage of the opportunities made available by AmeriCorps funding and that there is a need to increase opportunities for more Americans to serve.[16]

2. *AmeriCorps Education Awards are important to the Teaching Fellows Program.*

The IG's Letter argues that the AmeriCorps Education Awards could not have spurred participation because members were unaware of them. This claim is made on the grounds that (until recently) the program web site did not announce the AmeriCorps connection and that several program members who were interviewed stated they did not know that their awards came from AmeriCorps.

It should be noted that there appears to be no legal support for the IG's view that lack of widespread publicity about the awards would undermine the Teaching Fellows program. AmeriCorps does not require that programs be identified as affiliates or that those receiving education awards be identified as AmeriCorps members.[17] Nevertheless, RFCUNY regards AmeriCorps membership as a significant benefit both to the program and to the Teaching Fellows.[18] It has always referenced AmeriCorps as part of the Teaching Fellows Program and has recently taken additional steps to provide more visible credit to AmeriCorps for its contribution.

The City Teaching Fellows web site has always included information on AmeriCorps and on the education awards it provides. At times this information has not been on the web site's front page, but it has consistently been placed in the section on member benefits. Candidates who are considering applying are likely to delve into the web site at least to the point of acquiring information on the benefits they might expect. Moreover, at the end of the summer pre-service training, Teaching Fellows are all advised on the application process to become AmeriCorps members and obtain the resulting benefits.

There can be no serious doubt that the AmeriCorps awards are important to Teaching Fellows. It appears that program administrators have chosen not to highlight the awards until participants successfully complete their summer pre-service training and apply for membership. The training is demanding and not all participants succeed in it. For those who do, joining AmeriCorps at the end of the summer just before they assume responsibility for their own classrooms is a final stage in becoming committed teachers in high-needs schools.

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[16] 155 CONG. REC. S3841-01 (daily ed. March 26, 2009) (statement of Sen. Enzi).

[17] AmeriCorps. 2007 Education Award Provisions.

[18] The IG's Letter appears to assume that the only legitimate purpose of education awards is to benefit the program. As noted above, they do benefit the Teaching Fellows Program by assisting in the recruitment of the most highly qualified and diverse applicants. However, as noted by the IG's draft report in this very engagement, the Corporation "also provides educational opportunities for those who have made a substantial commitment to service." "Agreed-Upon Procedures for Corporation for National and Community Service Education Award Program Grants Awarded to the Research Foundation of the city University of New York, Office of Inspector General, Corporation for National and Community Service, Prepared by Cotton & Company at 3. The Teaching Fellows have made a very large commitment to service and, like all other AmeriCorps participants who meet the eligibility requirements, are entitled to receive awards on that basis.

Although the Americorps education award is a delayed benefit, it comes at a crucial stage in the Teaching Fellows' transition to becoming full-fledged teachers. The Teaching Fellows become eligible for the awards after they have completed 1700 hours of service. Coming as they do after the Teaching Fellows finish what many find to be a grueling first year, the education awards may fact serve as a welcome inducement to continue in a demanding role. Teaching Fellows are disproportionately placed in high-poverty schools, which most often experience high rates of teacher exit.[19] However, Teaching Fellows have stayed in impressive numbers, helping to significantly narrow the gap between the qualifications of teachers in low- and high-poverty schools.[20] Moreover, the education awards can help Teaching Fellows avoid or reduce education debt, which could be a barrier to continuation in the field for teachers who are just beginning to get their professional sea legs.

Nationwide, only about half of those AmeriCorps members who receive education awards actually make use of them. In the New York City Teaching Fellows program, more than ninety-five percent do so. This suggests that these awards are, in fact, operating as intended. They recognize and encourage commitment to service, and they underwrite human capital investment by recipients. In the New York City Teaching Fellows Program, those who have received this investment in turn work to increase the human capital of those in the next generation, their students.

There can be no serious doubt that Teaching Fellows value the education awards. Nevertheless, it is entirely possible that some of them are confused about the institutional role of AmeriCorps in providing the awards. The Teaching Fellows are immersed in several complex organizational relationships: they work as NYC DOE employees; they study as students in graduate programs at a range of area universities; and they receive program materials from RFCUNY. Some of the Teaching Fellows may therefore be unclear about which agency has responsibility for which aspects of the program. This is especially so when they are questioned about the educations awards months or years after they applied for them. RFCUNY will certainly endeavor to improve its communications with members so that they understand the auspices of the programmatic support they receive. Nevertheless, their occasional uncertainty on the source of their education awards hardly supports the conclusion that the education awards are not important to the Teaching Fellows Program or that the Teaching Fellows Program is not consistent with the purposes of the Act.

3. *AmeriCorps funding is neither duplicative nor wasteful.*

The IG's Letter recognizes that the Teaching Fellows Program and the Teaching Opportunity Program "appear to contribute substantially to meeting a community need for teachers." It goes on to find, however, that "the AmeriCorps aspects of the program merely support an existing activity that is already adequately funded in amounts sufficient to attract recruits to become qualified teachers." No evidence is cited to support that assertion. Instead, the IG's Letter seeks to impose on RFCUNY the obligation, found nowhere in the Act, to provide "convincing evidence that demonstrates that AmeriCorps funding is <u>essential</u> to recruiting volunteers into the alternative paths to becoming professional certified teachers in New York

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[19] Boyd, Donald, Hamilton Lankford, Susanna Loeb, Jonah Rockoff, and James Wyckoff. 2008. "the Narrowing Gap In New York City Teacher Qualifications and Its Implications for Student Achievement in High-Poverty Schools." *Journal of Policy Analysis and Management*, Vol. 27, No. 4:793-818.

[20] The New Teacher Project. 2009. "A Growing Force: More than 8,300 NYC Teaching Fellows." www.tntp.org/ourimpact/impact_nyc.html. Retrieved April 12, 2009.

City's public schools or that the benefits, while significant, are in any way attributable to AmeriCorps activities." (Emphasis added.) As noted above, the IG's approach is inconsistent with the Act's explicit inclusion of professional corps programs, the value of which was recognized by President Bush when he directed the Chief Executive Officer of the Corporation that "[g]uidelines for the selection of national and community service programs should recognize the importance of professional corps programs in light of the fundamental principles and policymaking criteria set forth in this order."[21]

To be sure, as a matter of policy, the Corporation should and does seek to ensure that education awards add value to an existing program before it approves an application for funding. Its instructions to grant applicants provide the following guideline: "If you currently operate a community service program and are proposing to make education awards available for those performing service, please describe how the education awards will add value to the program and increase or enhance the program's impact in the community. This 'value added' may be established by: . . . improving the caliber or diversity of members enrolled. . . ."[22] That is precisely how the Teaching Fellows Program justified the renewals of its grants, and the Corporation apparently found that justification convincing. There is no basis for the IG to second-guess the judgment of the Corporation on this matter.

The IG's Letter places emphasis on the fact that funding from NYC DOE far outstrips that from AmeriCorps. Teaching Fellows receive a salary of $45,530 (plus benefits) from the Department of Education, while they receive an education award of $4,725 from AmeriCorps. The disproportion is entirely in keeping with professional corps programs generally in which participants are paid salaries from government agencies that employ them. AmeriCorps contributes only education awards and limited operating funds, thereby allowing it to leverage its funding. Any professional salary would exceed an AmeriCorps education award. This is in no way unique to the New York City Teaching Fellows Program, but inheres in the design of all professional corps programs.

This does not mean, however, that AmeriCorps funding is irrelevant or meaningless. In the Teaching Fellows Program, education awards help the Teaching Fellows manage the transition from their original careers to teaching; it also helps them over the enormously difficult period in which they combine teaching with the pursuit of a graduate degree. Congress clearly provided for the funding of professional corps programs on the assumption that the education awards provided by AmeriCorps will, in fact, assist in recruiting teachers and other professionals to work in underserved localities. The Corporation has also recognized the importance of education awards despite their small cost to the Corporation. In responding to comments to the draft changes in the regulations in 2005, the Corporation stated: "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."[23] In other words, education awards, especially in the context of a professional corps program, are very cost effective. This hardly seems a reason for finding in the context of the Teaching Fellows Program that they fall outside the Act's purposes and should be discontinued.

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[21] Executive Order No. 13331, §3(c)(ix) (Feb. 27, 2004).

[22] AmeriCorps Education Awards Program, 2004 Application Instructions at 8-9.

[23] Federal Register, Vol. 20, No. 130 (July 8, 2005) at 39567.

## CONCLUSION

There is no dispute that the New York City Teaching Fellows Program has met an unmet social need and has done so with remarkable success. The program's results are clear; they are outstanding; and they are due to the innovative thinking, the hard work, and the contributions of many groups, including RFCUNY, NYCDOE and AmeriCorps. They have worked together, contributing in different ways and in different proportions, and together they have devised and implemented a plan that works. This is the meaning and purpose of a professional corps program.

As noted above, RFCUNY is responding separately to the Draft Report regarding its recordkeeping and administrative procedures. There are a few areas in which it needs to improve its performance. RFCUNY will do so and will ensure that participants adhere to the highest standards of compliance. I note, however, that as a professional corps program, the Teaching Fellows Program has been closely monitored by the institutions in which the Teaching Fellows have worked and studied, especially NYC DOE. Thus, the program has had built-in structural safeguards. I am confident (and there is no evidence to the contrary) that no Teaching Fellow has received an unearned education award and that no Teaching Fellow has entered the public schools without an extremely thorough criminal background check. Whatever recordkeeping errors occurred have never compromised the integrity of the program.

RFCUNY stands by the New York City Teaching Fellows program and is proud of its achievements. The Teaching Fellows program has been enormously successful in meeting a critical social need. Many Fellows have chosen to remain in the schools, demonstrating a continued ethic of service. The program has been cost-effective for AmeriCorps, and it has had the "broad reach" stipulated as a goal of programs supported by the Corporation. RFCUNY has implemented a professional corps program in accordance with the Act, and it has done so to the significant benefit of the people of New York and the United States. Far from being deemed "impermissible," the Teaching Fellows Program should be recognized for its innovation and extraordinary social impact due to the contributions of all of its partner institutions.

Very truly yours,

Matthew Goldstein

cc: Frank Trinity
General Counsel
Corporation for National and Community Service

Corporation for NATIONAL & COMMUNITY SERVICE

May 4, 2009

Honorable Gerald Walpin
Inspector General
Corporation for National and Community Service
1201 New York Avenue NW
Washington, D.C. 20525

RE: Your letter to the Corporation and RFCUNY dated April 2, 2009.

Dear Mr. Walpin:

I have reviewed your letter dated April 2, 2009, to the Corporation and to the Research Foundation of the City University of New York (RFCUNY), conveying a draft of your findings and recommendations in connection with Corporation grants 04EDHNY003 and 07EDHNY002 to RFCUNY.

After careful review of your letter, we cannot concur in your draft finding that RFCUNY has never operated an AmeriCorps program. The basis of our position is set forth in the attached memorandum of the General Counsel, which does not agree with your legal analysis or with the conclusions you reach based on the factors you cited in your letter. Specifically, we do not agree with your legal analysis of unmet needs and nonduplication with respect to a professional corps program like the RFCUNY teacher corps. We believe that RFCUNY was and is eligible for AmeriCorps funding because it expands and strengthens a professional corps program addressing an unmet need as specified in section 122(a)(8) of the National and Community Service Act of 1990; in this case addressing the shortage of high-quality teachers in New York City public schools.

Accordingly, the Corporation will not act on your draft recommendations regarding the status of the RFCUNY AmeriCorps grants. General Counsel Frank Trinity and I are available to discuss this matter if you would like.

We will communicate with your office separately in connection with the draft report prepared by your outside audit firm.

Sincerely,

Nicola Goren
Acting Chief Executive Officer

Corporation for
NATIONAL &
COMMUNITY
SERVICE

May 4, 2009

**MEMORANDUM FOR NICOLA GOREN, ACTING CHIEF EXECUTIVE OFFICER**

**FROM:** Frank R. Trinity *Frank R. Trinity*
General Counsel

**SUBJECT:** Inspector General's Letter to the Corporation and RFCUNY, dated April 2, 2009

## A. Background

This memorandum concerns the Corporation's AmeriCorps Education Award Program grants to the Research Foundation for the City University of New York (RFCUNY) to operate the New York City Teaching Fellows and Teaching Opportunity programs (hereinafter "RFCUNY teacher corps program"). In a letter dated April 2, 2009, the Inspector General concludes that "the AmeriCorps grant was merely 'icing on the cake' for a program that already existed and that RFCUNY was not conducting an AmeriCorps program." The Inspector General's letter[1] recommends that the Corporation –

- terminate our current grant relationship with RFCUNY;
- recover from RFCUNY all grant funds spanning a five-year period, or $4.2 million;
- recover from RFCUNY all payments made from the National Service Trust to cover program participants' student loan interest, or $917,000; and
- recover from RFCUNY all payments made from the National Service Trust to provide education awards to program participants, or $40 million.

The total amount recommended for recovery from RFCUNY in the Inspector General's April 2 letter is approximately $45.1 million.

The Inspector General states that his recommendations are made "in conjunction with and as a supplement to" a draft Agreed-Upon Procedures Report also provided to the Corporation on April 2, 2009. The Agreed-Upon Procedures Report identifies issues of costs and compliance, including documentation of member eligibility and member service hours -- appropriate for resolution by the Corporation's normal audit resolution procedures.

## B. Summary

This memorandum provides my legal opinion that the RFCUNY teacher corps program qualifies for AmeriCorps grant funding as a professional corps program model as recognized by Congress in law, and identifies what I believe to be certain methodological and analytical flaws

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[1] The first sentence of the Inspector General's letter describes his letter as conveying "the Office of Inspector General's ("OIG") draft of its finding and recommendation" regarding the Corporation's two grants to RFCUNY (emphasis added).

in the Inspector General's April 2, 2009 letter. Those flaws, in my view, counsel against accepting the Inspector General's recommendations.

In developing my opinion, I reviewed applicable provisions of the national service legislation and other laws, publicly-available reports issued by other Federal agencies concerning the national teacher shortage, RFCUNY's applications and progress reports, information from our National Service Trust, results from a 2006 random survey of AmeriCorps members, correspondence provided by RFCUNY to the Office of Inspector General prior to the issuance of the draft AUP report and the IG letter of April 2, and the April 2 OIG documents. I requested but was not provided the work papers supporting the draft AUP report and, by extension, the IG letter of April 2.

**C. The professional corps program model is categorically eligible for AmeriCorps funding.**

To be eligible for AmeriCorps funding, an applicant organization must assure the Corporation that the program will (1) address, among other things, unmet educational needs through services that provide a direct benefit to the community in which the service is performed and (2) comply with applicable nonduplication requirements. 42 U.S.C. 12583(a). For teacher corps programs, the unmet educational need is primarily the national gap in education achievement and the shortage of high-quality teachers for low-income public school students. Congress has sought to address the well-documented and long-standing educational gap and high-quality teacher shortage in many ways, including through explicitly including the professional corps as an eligible program model within AmeriCorps.

Section 122(a)(8) of the National and Community Service Act of 1990 specifically endorses funding for a professional corps program that recruits and places qualified participants in positions as teachers in communities with an inadequate number of such professionals. Further, this section expressly permits such individuals to receive a salary in excess of the otherwise-applicable limit on living allowances, under the sponsorship of public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than an education award) of the participants. 42 U.S.C. 12572(a)(8).

The Edward M. Kennedy Serve America Act, enacted as Public Law 111-13 on April 21, 2009, reaffirmed the inclusion of professional corps programs, including teacher corps programs, within AmeriCorps.

**D. RFCUNY's grant is designed to expand and strengthen a professional corps program that addresses an unmet need for high-quality teachers in New York City's public schools.**

In an effort to address a well-documented shortage of qualified, certified teachers in New York City public schools,[2] the RFCUNY teacher corps program facilitates an alternative

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[2] RFCUNY's applications for funding each year have identified the teacher shortage areas in NYC in which members are placed, including mathematics, science, Spanish, bilingual education, ESL, and special education.

certification program through which participants teach full-time while remaining enrolled in a teacher education program leading to a Master's degree in the content area of the certification. The program provides for all salaries and benefits of participants and, upon the successful completion of a term of service, participants are eligible to earn an education award.

RFCUNY's applications for AmeriCorps support articulate how the program recruits, trains, and supports highly-qualified new teachers for high-need schools in New York City. The applications describe a rigorous selection process designed to identify individuals with the potential to complete the program and succeed as teachers in a challenging environment. The applications describe how the State of New York and New York City support most of the program's costs. The applications describe the provision of AmeriCorps education awards as critical to attracting and retaining members.

RFCUNY's applications for AmeriCorps funding reflect the judgments of the City University of New York, the New York City Department of Education, and the New York State Education Department -- like that of Congress -- that there is a need for financial incentives above and beyond regular teacher salary and benefits to attract and retain highly-qualified teachers for New York City public schools. In my opinion, the program has been properly classified by the Corporation as a professional corps program model and is legally permitted to operate its AmeriCorps program. The program clearly meets the statutory definition of professional corps, recruiting and placing individuals in positions as teachers in a city that has an unmet need for certified teachers.

Progress reports indicate that the program is achieving one of its primary goals of members continuing to teach in New York City public schools after completing the program, with more than three-quarters of members deciding to continue into their third year. The program also reports progress in increasing the diversity of New York City's classroom teachers, with nearly half of members who are people of color.

Information available from the National Service Trust shows that more than 90% of participants in the RFCUNY teacher corps program successfully completed their terms of service and earned education awards and nearly 87% of those education awards have already been used to defray the member's educational expenses. These figures are significantly higher than those for AmeriCorps programs generally.

My review of the record indicates that there was a strong basis for the Corporation having approved RFCUNY's applications for AmeriCorps support to expand and strengthen a professional corps program designed to address the unmet need[3] for highly-qualified teachers in

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These shortage areas correlate with those identified by the Department of Education's publication on Teacher Shortage Areas 1999-2000 – 2009-2010, available at http://www.ed.gov/about/offices/list/ope/pol/tsa.doc.

[3] In examining the requirement that an AmeriCorps program address an "unmet need" the Inspector General focuses on whether the RFCUNY program would exist in the absence of AmeriCorps support. I do not believe that is the appropriate inquiry. Congress has identified the unmet need to be met by professional corps programs – the shortage of teaching and other professionals in a community. 42 U.S.C. 12583(a)(8). In this matter, there is ample evidence that New York City has an unmet need for high-quality teachers in its public schools.

New York City's public schools. Given the express authority for teacher corps programs in the national service legislation, and the articulated nexus between AmeriCorps support and increasing the number of highly-qualified teachers in New York City public schools, the Corporation was well within its authority to approve RFCUNY's applications for grant funds and to make education award and student loan interest payments from the National Service Trust to defray the educational expenses of the teachers who successfully completed the program.[4]

**E. The premises for the Inspector General's recommendation are flawed.**

Having concluded that the Corporation's support for the RFCUNY teacher corps program is authorized under applicable law, I now turn to the specific bases for the Inspector General's recommended sanction of recovering $45 million from RFCUNY.

The Inspector General does not dispute that New York City has a need for certified teachers in its public schools or that the RFCUNY teacher corps program addresses that need. The Inspector General states, however, that AmeriCorps grant funds and National Service Trust payments "merely support an existing activity that is already adequately funded in amounts sufficient to attract recruits to become qualified teachers" (emphasis added).

In support of his opinion that AmeriCorps funding is "not necessary", the Inspector General relies on several premises:

1. *Demand for the RFCUNY's program is high, with space available for only 10% of applicants (page 7).*

2. *Five of the six members contacted during the AUP engagement stated that they were not aware of the AmeriCorps education award when they initially applied for the Fellows program (pages 6-7).*

3. *The relatively small amount of the education award is not enough to make a difference in recruiting Fellows (page 7).*

4. *A generalized objection, expressed in various ways:*
    - *The program "does no more than" provide education awards to members who had, prior to becoming an AmeriCorps member, volunteered for this "identical" service (page 1).*
    - *There is no "convincing evidence" that the RFCUNY program's significant benefits to the community are "in any way attributable to AmeriCorps activities" (page 6).*
    - *Because the program already existed, AmeriCorps support is "merely 'icing on the cake'" (page 8).*

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[4] RFCUNY's implementation of the grants is appropriately examined in the upcoming audit resolution process.

None of these premises is a sufficient basis for the Corporation to assert a claim against RFCUNY for $45 million in previously-awarded grant funds and previous payments from the National Service Trust to program participants.

**IG Premise Number 1:**
*Demand for the RFCUNY's programs is high, with space available for only 10% of applicants.*

The Inspector General's view that a program's success in increasing the number of applicants jeopardizes its eligibility for funding has no basis in the national service legislation and runs counter to the ability of teacher corps programs to close the educational gap by recruiting and retaining the best-qualified teachers. A highly-competitive process allows RFCUNY to select the individuals deemed most likely to overcome the many challenges associated with teaching careers in under-resourced schools.

The Inspector General overlooks the fact that a higher number of applicants can strengthen the diversity and professional attributes from which to choose Fellows, ultimately resulting in a higher retention rate, better quality teaching, and better educational outcomes. Increased applicant pools is a positive program attribute, a point repeatedly made in bi-partisan House and Senate colloquies made as recently as March 2009, as well as by Senator Kennedy himself who lauded the Teach for America professional corps program for having received 35,000 applications for just 4,000 positions.[5]

Moreover, the Inspector General renders his opinion about a highly-selective program not needing AmeriCorps support without reference to any objective standard or criterion, and the record does not include any basis for determining that a given number of applicants should trigger a disqualification for funding. The arbitrariness of the Inspector General's recommendation to recoup $45 million from RFCUNY is further reinforced by the fact that RFCUNY's applications for funding clearly informed the Corporation that the program would rigorously screen applicants and admit only a small percentage.

By expressly authorizing participants to receive an education award in addition to the salaries and benefits otherwise provided to teachers, Congress recognized that additional financial incentives may be necessary to recruit and place qualified participants, and included no basis for requiring disgorgement of grant funds and imposing liability for education award payments because a program is successful in increasing the number of applicants.

**IG Premise Number 2:** *Five of the six members interviewed were not initially aware of the education award.*

The Inspector General also relies on the fact that five of the six members contacted during the AUP engagement "stated that they were not aware of the AmeriCorps education Award [sic] when they signed up for the Fellows Program." During the five year grant period

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[5] 155 Cong. Rec. H3543, H3549 (March 18, 2009); 155 Cong. Rec. S3822, S3837 and S3842 (March 26, 2009).

under the Inspector General's scrutiny, more than 14,000 individuals enrolled in the program. A sample size of six, on its face, cannot support the inferences drawn by the Inspector General.[6]

Moreover, a brief set of inquiries into other information regarding the RFCUNY programs show that, notwithstanding the interview responses of five of six members interviewed during the AUP engagement, there are documented reasons to believe that the availability of AmeriCorps benefits is, in fact, a substantial factor in recruitment for RFCUNY's teacher corps program. In a survey conducted for the Corporation by the Urban Institute, 81% of the participants interviewed at the RFCUNY program stated that the education award was a factor in their decision to join the AmeriCorps program. This level is significantly higher that the 71 percent of AmeriCorps members across all types of programs who reported that the education award was a factor in deciding to join AmeriCorps.

Finally, the Inspector General's sole focus on initial recruitment is unnecessarily restrictive. The goal of the RFCUNY program -- mirroring the statutory authority for all professional corps programs -- is to recruit and place highly-qualified teachers in New York City public schools. The five members' initial recruitment provides no evidence to question that AmeriCorps benefits support the placement of high-quality teachers by easing their student loan debt and defraying a portion of their educational expenses. A New York State Department of Education report dated May 2, 2008, confirms the need to "offer financial incentives to attract and retain public school teachers because we are competing with other states for the available supply of teachers and with other industries that are attractive to young professionals" (emphasis added).[7]

**IG Premise Number 3**: *The relatively small amount of the education award is not enough to make a difference in recruiting Fellows.*

The Inspector General views the amount of an AmeriCorps education award to be too small (in comparison to the salaries and benefits available to professional corps participants) to provide an economic incentive for prospective participants to enroll in the program. However, the National and Community Service Act permits participants in a professional corps program to receive a salary in excess of the maximum authorized for other AmeriCorps members – an amount often comparable to that received by other similarly situated professionals in that community. Thus, the program model expressly provided by Congress acknowledges that the available salary and benefits of these positions are insufficient to attract or retain an adequate number of such professionals, and that the education award would be used as an additional tool to address the shortage.

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[6] The Inspector General's decision not to share the workpapers relating to the sample size of six limits our ability to respond. Without the workpapers, the record available to the Corporation does not show whether the six members were representative of the entire five-year period under the Inspector General's scrutiny, or the questions asked. Without the workpapers, the record does not indicate how the auditors chose a sample size of 20 or the parameters for that decision. There is a serious question in my mind whether the use of that sample for the purposes of the Inspector General's April 2 finding and recommendations is outside the scope of the auditors' determination.

[7] New York State Department of Education, Progress Report on Teacher Supply and Demand, May 2, 2008, page 6.

Congress has fixed in law the specific amount of the education award and has expressly authorized the education award to be provided to professional corps members in addition to salaries and benefits otherwise provided as part of their position. The Inspector General provides no authority in his letter for substituting his opinion for the judgment of Congress.

**IG Premise Number 4:**
*A generalized objection, expressed in various ways:*

- *The program "does no more than" provide education awards to members who had, prior to becoming an AmeriCorps member, volunteered for this "identical" service (page 1).*
- *There is no "convincing evidence" that the RFCUNY program's significant benefits to the community are "in any way attributable to AmeriCorps activities" (page 6).*
- *Because the program already existed, AmeriCorps support is "merely 'icing on the cake'" (page 8).*

The Inspector General focuses solely on the relationship between the education award and the initial recruitment of participants and, perceiving an insufficient nexus, he questions the legality of providing AmeriCorps support to the program. As pointed out above, the purpose of the AmeriCorps program is not simply to recruit individuals into teacher corps positions – it is also to support those individuals in completing the program and graduating into permanent teacher positions in New York City public schools serving low-income children.

RFCUNY's relatively high completion and education award usage rates suggest that the availability of the education award in this case does, in fact, play a critical role in ensuring participants complete the program and become qualified, certified teachers. The Inspector General's letter does not address that, by design, tuition for the required Master's degree courses does not become due until the end of the year, enabling participants who successfully complete a year of service to use their education award towards their tuition expenses. The Inspector General's letter also does not take into account that RFCUNY participants qualify for forbearance in the payment of the student loans while they serve and payment of the accrued interest upon their successful completion of the program. It is reasonable to infer that this additional benefit advances Congress's goal of promoting the retention of high-quality teachers in communities with a shortage of such teachers. Thus, the AmeriCorps education award does more than provide support to individuals who have entered the program; the education award is a means to increase the number of such individuals who complete the program and become highly-qualified teachers after leaving the program.

The Inspector General sees no "specific identifiable service or improvement that otherwise would not be done with existing funds" because he does not see the RFCUNY teacher corps program, in its entirety, as "an AmeriCorps activity". But the specific statutory design of professional corps programs allows the entirety of the program to be considered "an AmeriCorps activity." It is Congress' intent that AmeriCorps support be provided to salaried professionals if the funded program recruits and places the professionals in communities with a shortage of such professionals. Congress has determined – and recently reaffirmed -- that "AmeriCorps activities" may include a professional corps like RFCUNY's teacher corps program. Consistent

with Congress' determination, the undisputed success of the RFCUNY program in increasing the number of highly-qualified teachers in New York City schools is properly attributable, in part, to the AmeriCorps support.

The Inspector General's concern on this point re-surfaces OIG's previous argument that teaching professionals should earn service hour credit towards an AmeriCorps education award only for uncompensated service, that is, outside of regular teaching duties in the case of a teaching professional. Under the professional corps authority in the national service legislation, as I have previously opined, the teaching undertaken by professional corps members is an AmeriCorps activity. Therefore, the RFCUNY teacher corps programs' benefits to the students and community -- acknowledged by the Inspector General – are properly attributable to AmeriCorps activities.

Finally, the Inspector General notes that the program "already existed" and expresses the view that AmeriCorps funding violates the statutory prohibition on duplication. However, one of the purposes of the NCSA is to "expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and the community." 42 U.S.C. 12501(b)(6)) (emphasis added). CUNY provided the Inspector General a written summary dated February 10, 2009 which showed that the program has, with support from AmeriCorps, expanded from a pilot of 300 participants to a program that is a major pipeline for thousands of certified teachers to enter the New York City public school system. However, the Inspector General's letter of April 2, 2009 does not acknowledge the specific evidence that RFCUNY's AmeriCorps grant has been instrumental in expanding and strengthening this program.

Congress, the New York State Department of Education, the New York City Department of Education, and the City University of New York, have all determined that additional financial incentives -- including the AmeriCorps education award and payment of student loan interest – are an important tool in addressing the long-documented shortage of high-quality teachers for low-income children.

**F. Conclusion**

The findings in the outside auditors' draft report are appropriate for resolution by Corporation management through the standard audit resolution process which will begin at the issuance of the final audit report.

However, the Inspector General's separate letter dated April 2, 2009, fails to make the case for his recommendation that the Corporation recoup $45 million from RFCUNY. The letter expresses a misunderstanding of the applicable legal framework and rests on flawed methodology. For these reasons, I advise the Corporation not to take any action on the basis of the Inspector General's April 2 letter and instead focus its efforts on the specific findings in the draft audit report.