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

GENERAL COUNSEL

April 1, 2003

Ms. Susan A. Poling
Associate General Counsel
General Accounting Office
Washington, D.C. 20548

Subject: Corporation for National and Community Service National Service Trust

Dear Ms. Poling:

This responds to your letter of March 7, 2003, requesting OMB's views on the practices of the Corporation for National and Community Service (Corporation) with respect to its National Service Trust (Trust). We note that many of the questions that you posed to OMB were also contained in your March 7th letter to the Corporation, and that the Corporation provided its response to you on March 21st.

I would like to recount briefly the history and issues relating to the Corporation's practices. OMB learned last year that the Corporation had been, for many years, improperly recording the amount of the Trust's budgetary obligations which had the effect of increasing, inappropriately, the amount of the Trust's unobligated balances. Since learning of this inappropriate practice, OMB has worked with the Corporation to correct it. As the Corporation's letter to you of March 21st explains, the Corporation is implementing proper practices.

As noted above, the Corporation for many years inappropriately recorded its budgetary obligations. The problem was the Corporation's failure to record its educational award obligations at the appropriate time. The Corporation did not record budget authority as having been obligated in connection with an award until the Corporation actually disbursed the payment in satisfaction of the award, i.e., at the point of an outlay. Instead, the Corporation should have obligated the budget authority at a point when the Corporation incurred a binding obligation to pay education benefits to a person. See 31 U.S.C. 1501. In the case of an educational award, the Corporation incurs a binding obligation to provide the award well in advance of when the Corporation must disburse cash to support the person's education.

The Corporation has explained in its letter to you of March 21st that the Corporation is correcting its practices. Under its new procedures, as the Corporation explains in its letter, the Corporation will record the educational award as an obligation at an appropriate time. (In addition, in response to your questions concerning the Corporation's authority to obligate against interest earnings, OMB has informed the Corporation that it may obligate against interest that has been earned and received.

However, the Corporation may not obligate against an estimate of future interest earnings. The Corporation has informed OMB that it has not obligated against future interest, but only against interest that has been earned and received.)

As a result of its previous inappropriate obligation practices, budget materials prepared by the Corporation both for the Administration and for Congress did not present an accurate picture of its budgetary position. Specifically, by failing to record the educational awards appropriately as obligations, the Corporation significantly understated its level of obligations and overstated its unobligated balances.

In apparent reliance on the Corporation's reporting of excessive unobligated balances, Congress rescinded a total of over $140 million in Fiscal Years 1994 ($1.25 million in P.L. 103-211), 1995 ($31 million in P.L. 104-19), 2000 ($80 million in P.L. 106-74), and 2001 ($30 million in P.L. 106-377). In addition, again in reliance on the Corporation's reporting of excessive unobligated balances, the Administration did not request and Congress did not appropriate any new funds for the Trust in FY2002. Consequently, when OMB learned last year of the recording errors, and the Trust's obligations thereafter began to be recorded correctly, it became clear that the Trust did not have sufficient budget resources to cover its obligations, thereby resulting in a deficiency which the Corporation estimated at $64 million.

As the Corporation explains in its letter to you of March 21st, the Corporation is correcting its obligation recording errors. In addition, we have worked with the Corporation to institute new management, monitoring, and reporting procedures for its grant process to ensure that funds are available and properly recorded for program participant awards. However, the $64 million deficiency has not yet been addressed. (The $100 million that Congress provided to the Trust in its fiscal year 2003 appropriation is available for the Corporation's FY03 activities. Congress did not make the FY03 funds available to liquidate the $64 million in deficiency obligations from FY02 and prior years.) To address the deficiency, and to ensure that the education awards are paid on a timely basis, the Administration submitted to Congress a request for a deficiency appropriation on March 4, 2003. A copy of this request is enclosed.

Finally, your letter requested OMB's views on the application of the Anti-Deficiency Act to these circumstances. A violation of the Anti-Deficiency Act requires action by "an officer or employee of the United States Government" (31 U.S.C. 1341). If an officer or employee incurs an obligation that is greater than the budgetary resources available, a violation of the Anti-Deficiency Act occurs, and section 1351 of the Act requires the agency (here, the Corporation) to report the violation to the President and Congress, which is done in accordance with OMB Circular A-11.

In this case, the Corporation made errors in its recording of obligations. However, OMB has insufficient information to conclude that these recording errors by themselves resulted in the Corporation incurring obligations in excess of the budget authority that was available to the Corporation. As explained above, the Corporation estimated the cumulative deficiency at $64 million. Congress rescinded a total of over

$140 million in what it (and the Executive Branch) thought were "unobligated balances" in Fiscal Years 1994, 1995, 2000, and 2001. Since the $140 million in rescissions exceeds the $64 million deficiency, it could be possible that, despite its recording errors, the Corporation did actually have sufficient unobligated balances to cover its obligations, and that the rescissions triggered a deficiency (as the Corporation's letter suggests). In any event, the clear fact remains that the Corporation was employing inappropriate recording procedures and a deficiency occurred. Again, the Corporation reports that it is correcting those practices.

OMB has requested that the Corporation now prepare a year-by-year reconstruction of the Trust's financial situation and perform an analysis clarifying what the Trust's obligated and unobligated balances should have been each year. Such information is needed before any conclusion can be reached as to whether the deficiency, which we all recognize occurred, also violated the Anti-Deficiency Act. In accordance with the Anti-Deficiency Act, the Corporation will then determine whether a violation of the Act occurred.

If you should have additional questions concerning this letter, please feel free to contact me at 202.395.5044, or Steven Aitken (202.395.4728) or Kimberley Luczynski (202.395.7870) of my staff.

Sincerely,

Philip J. Perry
General Counsel

Enclosure