

MANAGEMENT ALERT

CONCERNS REGARDING THE
OBLIGATION OF RESCINDED
PANDEMIC FUNDS AND GRANT
PROCESS DOCUMENTATION

JANUARY 14, 2025





AmeriCorps Office of Inspector General

Stephen H Ravas
Acting Inspector General

January 14, 2025

MEMORANDUM TO: Jenny Mauk, Chief of Staff
AmeriCorps

FROM: Stephen H Ravas
Acting Inspector General

SUBJECT: **Management Alert:** Concerns Regarding the Obligation of
Rescinded Pandemic Funds and Grant Process Documentation

In early 2021, AmeriCorps received \$1 billion in supplemental funding under the American Rescue Plan (ARP) primarily to award grants in support of its programs. These funds were to remain available until September 30, 2024. On June 3, 2023, however, Congress rescinded all unobligated AmeriCorps ARP program funds. As part of our oversight of ARP funds, the AmeriCorps Office of Inspector General (AmeriCorps OIG) identified more than 100 Notices of Grant Award involving ARP funds issued after June 3, 2023. Although AmeriCorps' position is that these grants could still be awarded because they were obligated prior to the rescission when the CEO certified the award package containing the grants, the certification dates were not recorded in AmeriCorps' systems or clearly articulated in its policies and procedures, resulting in AmeriCorps' inability to accurately determine the status of funds. Our review also determined that Federal appropriation law, relevant precedent, and AmeriCorps' own accounting treatment of when grant funds are obligated raise concerns that more than \$144 million in ARP funds are at risk of having been obligated after they were rescinded by Congress. This alert highlights the need for AmeriCorps to seek a formal opinion from the Government Accountability Office (GAO) regarding whether AmeriCorps obligated rescinded ARP funds and to improve its policies, documentation, and recording of all key steps in its grant award process.

CC: Michael Smith, Chief Executive Officer
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Management Alert: Concerns Regarding the Obligation of Rescinded Pandemic Funds and Grant Process Documentation

BACKGROUND

The American Rescue Plan (ARP) Act was passed in March 2021, to enhance the country's recovery from the economic and health impacts of the COVID-19 pandemic and recession. This legislation provided AmeriCorps \$1 billion to supplement its annual appropriations. Most of this funding was intended to remain available until September 2024. However, the Fiscal Responsibility Act (FRA), enacted June 3, 2023,¹ rescinded all AmeriCorps ARP program funding that was unobligated as of the date the law was enacted.

Federal Standards for Agencies to Obligate and Record Appropriated Funds

Federal appropriations law requires agencies to record grants in their budget and financial records systems when they have notified a grant recipient of the agency's unconditional commitment to award a grant supported by written documentation. The purpose of the law is to ensure the agency promptly and properly records obligations in its systems, which in turn provides accurate budget reporting to Congress. In addition, it prevents an agency from committing funds that were not appropriated or available in violation of the Anti-Deficiency Act. The Government Accountability Office (GAO) is the recognized federal agency that provides opinions on when federal funds are obligated.

An obligation is a binding commitment by the government to fund a particular item.² Agencies may only obligate funds that have been appropriated to them by Congress.³ Once Congress rescinds appropriated funds, unobligated funds must be returned to the Treasury.⁴ Thus, after appropriated funds have been rescinded, they are no longer available to be obligated to grant awards.

The Recording Statute requires a federal agency to record any amount the agency obligates on behalf of the United States Government.⁵ The Principles of Federal Appropriations Law ("Red Book") considers a binding obligation to be an action which:

¹ Pub. L. 118-5, 137 Stat. 10 (2023).

² OMB Circular No. A-11, Sect. 20.5 (July 2024) ("Obligation means a binding agreement that will result in outlays, immediately or in the future. Budgetary resources must be available before obligations can be incurred legally.")

³ *Id.*

⁴ See, e.g., *Rochester Pure Waters Dist. v. EPA*, 960 F.2d 180 (D.C. Cir. 1992).

⁵ 31 U.S.C. § 1501.

1. Creates a legal liability or definite commitment on the part of the government; or
2. Creates a legal duty that could mature into a legal liability by virtue of an action that is beyond the control of the government.⁶

For Federal grant awards, the Red Book considers the following conditions to be required for the agency to incur a valid obligation:

1. The United States (or federal agency) made an unconditional commitment;
2. Documentary evidence of the grant award; and
3. Notice of the terms of the award is communicated to the grantee.⁷

AmeriCorps' Grant Making Process

AmeriCorps' grant-making authority is derived from the National Community and Service Act of 1990, Domestic Volunteer Service Act of 1973, and Federal Grant and Cooperative Agreement Act.⁸ AmeriCorps delegates grant-making authority to the CEO, who may re-delegate to Program Directors.⁹ AmeriCorps' Award Documentation Policy requires multiple approvals of a grant application before it is "certified" by the CEO as the deciding official. Key steps in the grant making process are explained in Figure 1.

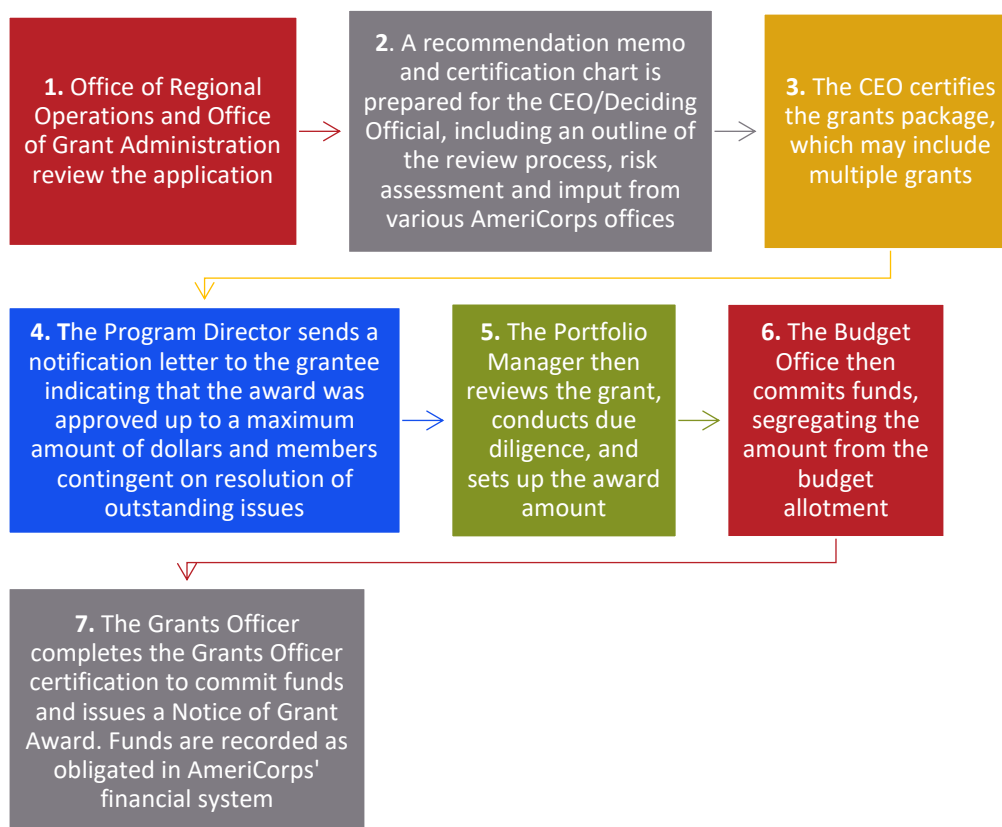
⁶ GAO-06-382SP, Principles of Federal Appropriations Law, § 7-2, 3rd Ed., Vol. II (Feb. 2006).

⁷ *Id.* at 7-40, citing 50 Comp. Gen. 857, 862 (1971); *Champaign County, Illinois v. United States Law Enforcement Assistance Administration*, 611 F.2d 1200 (7th Cir. 1979); B-126372, Sept. 18, 1956.

⁸ 42 U.S.C. § 12501 et seq., 42 U.S.C. § 4950 et seq., and 31 U.S.C. §§ 6301-6308, respectively.

⁹ AmeriCorps Policy 302, *Award Decision Documentation*, citing Delegation of Authority by the Board to the CEO (Oct. 19, 2022); Delegation of Authority by the CEO (June 29, 1998).

Figure 1: Key Steps in the AmeriCorps Grant Making Process



AmeriCorps' Analysis of the Date Grant Funds Are Obligated

AmeriCorps analyzed the question of when obligation occurs within its grant making process while the FRA was being considered by Congress. In April 2023, AmeriCorps concluded that obligation occurs when the CEO certifies an award package (Step 3 in Figure 1). In May and June 2023, AmeriCorps consulted extensively with OMB to ensure it acted appropriately in using ARP funds potentially subject to rescission. While we applaud the agency for consulting with OMB on this matter, our understanding is that OMB did not perform a legal analysis on when AmeriCorps grants become a valid obligation.

AmeriCorps concluded that the CEO certification creates a legal liability or a legal duty that could mature into a legal liability based on actions beyond its control. AmeriCorps further concluded that the CEO certification satisfies the required conditions for a valid obligation. This conclusion notwithstanding, AmeriCorps undertook significant effort to issue additional notices of grant awards up through June 2, 2023, including approximately 55 awards totaling \$68 million awarded in the four-day period from May 30 and June 2. These extraordinary steps just prior to June 3 would be unnecessary had the funds been previously obligated.

AmeriCorps Grants and Financial Systems Do Not Document All Key Phases of the AmeriCorps Grant Lifecycle

AmeriCorps does not record in eGrants, the system of record for grants, the date the CEO certifies a grant package (Step 3 in Figure 1) or reflect that grants have been made as of this date. Rather, AmeriCorps records the obligation at the time the Notice of Grant Award (NGA) is issued (Step 7 in Figure 1). Agency financial records are also not updated until the NGA is issued (Step 7 in Figure 1).

ANALYSIS

Opportunities Exist for AmeriCorps to Improve its Documentation and Recording of All Key Steps in the Grant Making Process, Including Grant Obligation Activity

AmeriCorps is required to accurately and timely record its transactions in official accounting records to ensure it complies with budgetary laws and regulations.¹⁰ This applies to all appropriation types, including ARP funds, as well as annual appropriations. An absence of key dates and activities in the system or recording inaccurate dates in the agency's systems makes it extremely difficult to determine whether AmeriCorps is complying with all relevant budgetary and financial laws and regulations including the Anti-Deficiency Act. This could also result in inaccurate reports being produced to external stakeholders, including compliance reports to OMB and Treasury, as well as its annual financial statements provided to Congress and the public.¹¹

AmeriCorps' grant policies do not address what date should be captured in the accounting system as the obligation date, nor when it must be recorded, creating ambiguity and potentially permitting obligations that do not comply with the appropriate laws, rules, and regulations.

For example, Figure 2 shows the timeline of actions for grant 21ACEMN001, which awarded \$8,607,335 in ARP funds. AmeriCorps indicated to us that this award was legally obligated by the CEO certifying a grants package on April 10, 2023. However, even if the award was obligated at this time, the April 10 date is not recorded anywhere in AmeriCorps' eGrants or financial system, and the award was not recorded in AmeriCorps' financial system until July 12, the date the NGA was issued (See Figure 3 and Figure 1 Step 7).

¹⁰ 31 U.S.C. § 1501.

¹¹ Our FY 2024 financial statement audit report also disclosed that AmeriCorps did not timely record a \$243 million rescission to the National Service Trust that was enacted by Congress on March 23, 2024. Preliminary information provided by the agency in relation to that audit indicates that the rescission of National Trust Funds was not recorded until six months after the funds were rescinded. This resulted in a negative \$62 million balance in a Funds With Treasury account when AmeriCorps overinvested funds on September 26, 2024 that were no longer available.

Figure 2: Timeline of Key Events Surrounding Obligation of ARP Funds under Grant 21ACEMN001

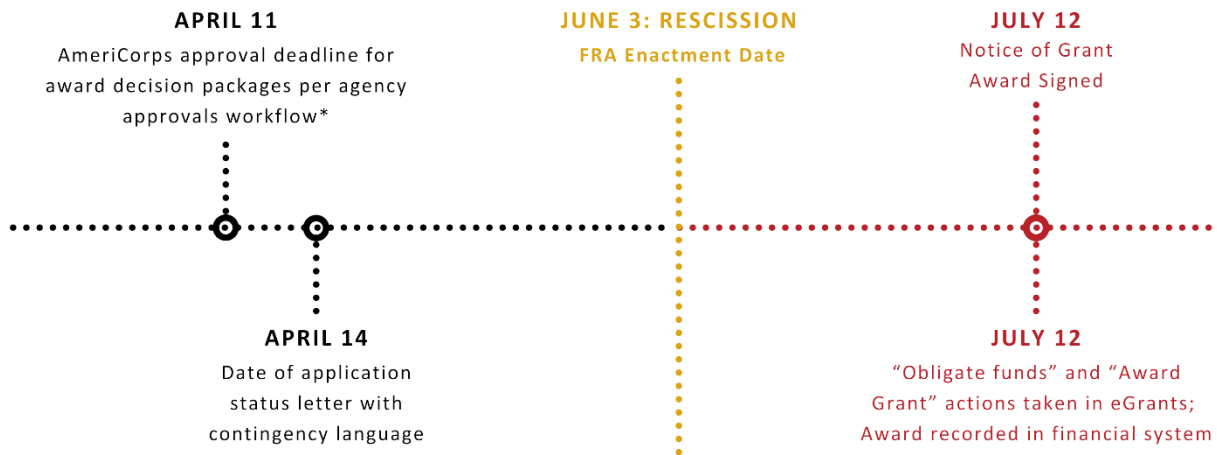


Figure 3: Signed Notice of Grant Award for Grant No. 21ACEMN001 July 12, 2023

Notice of Grant Award		For Official Use Only		250 E Street SW, Suite 300 Washington, DC 20525-0001 (202) 606-5000	
AmeriCorps State					
Grantee					
[Redacted]					
Award Information					
Agreement No.:	21ACEMN001	Performance Period:	08/01/2021 - 07/31/2024		
Amendment No.:	10	Budget Period:	08/01/2023 - 07/31/2024		
CFDA No.:		Grant Year:	3		
[Redacted]		07/12/2023	[Redacted]		
Signature		Award Date			
[Redacted]		[Redacted]			
Senior Grants Officer		Project Director			
[Redacted]		[Redacted]			
Grants Officer		Certifying Official/Executive Officer			
[Redacted]		[Redacted]			
Program Officer		[Redacted]			

We cannot determine the actual date that the CEO certified the grants package. AmeriCorps provided the OIG with two documents that it believes supports the April 10 certification date:

- a screen shot from AmeriCorps' agency-wide approvals workflow system showing an "approval deadline" of April 11, 2023. The screen shot also had a section "approvals completed" with a green check mark next to the names of approvers without any date.
- a document called "Timestamps for competitive packages" that showed a screen shot of an automated email from a workflow system dated April 10, 2023 that says, "This email is to notify you that clearance is now complete and this item is approved."

Without dates timestamped in the workflow system, or understanding the programming of the purported automated notification, we neither rely on the workflow system's approval nor the date of this email.

Over \$144 Million in AmeriCorps ARP Funds Are At Risk of Having Been Obligated After They Were Rescinded

AmeriCorps retained the discretionary authority to award grants using ARP funds until the FRA became law on June 3, 2023. Pre-FRA grants would be valid obligations of the agency to make immediate or future disbursements. However, after the FRA, AmeriCorps lacked obligational budget authority to obligate ARP funds for further grants. Because ARP grants should not have been obligated after June 3rd, documentary evidence of a definite commitment on the part of the government should exist prior to June 3, 2023, for the obligation to be valid.

An OIG review of agency accounting data identified that AmeriCorps issued NGAs awarding ARP funding after June 3, 2023.¹² Specifically, we reviewed AmeriCorps State and National competitive grant awards made between June 4 and September 30, 2023, to determine what actions occurred before and after ARP funds were rescinded June 3, 2023. The OIG identified \$144 Million in grants that had NGAs issued after June 3, 2023. At the time of this Alert, we have not analyzed ARP funded VISTA program funds, National Service Trust funds, or ASN formula grants. Had we looked at additional programs, other funds at risk may have been identified.

AmeriCorps asserts that the CEO certification of award packages (Step 3 in Figure 1) creates a definite and unconditional commitment on the part of the government and therefore meets the elements necessary to qualify as an obligating event. However, we cannot determine the actual date that the CEO certified the awards packages, as described earlier in this report. Additionally, at this phase in the grant lifecycle, the information is not communicated to the grantee and there is not language within the certification packet that states the commitment is unconditional – two factors that GAO has determined are relevant to obligation.

As discussed earlier, AmeriCorps' accounting system records the obligation upon issuance of the NGA (Step 7 in Figure 1). This accounting treatment is consistent with previous opinions by the Comptroller General, which indicate that the NGA is the moment in time when obligation occurs because this is the formal written document that embodies an unconditional commitment and notifies grantees of the grant award and its terms and conditions. For example, the Comptroller

¹² The FRA did not rescind \$73,000,000 in AmeriCorps administrative expenses and \$9,000,000 in OIG expenses.

General determined that the obligating event for grants from the Denali Commission was when the agency transmitted a financial assistance award to the grantee, not when the Commission passed a resolution approving the grant.¹³ Additionally, a federal appellate circuit found insufficient documentary evidence of a binding commitment on the government when U.S. Law Enforcement Assistance Administration officials communicated orally and in writing to county officials they had earmarked funds for their grant, which was contingent on further correspondence.¹⁴

Further, the language of typical AmeriCorps award notification letters (Figure 1 Step 4) conveys a tentative commitment. It uses multiple conditional phrases and implicitly indicates that the approval of the final grant award is within AmeriCorps' discretion. The conditional language in the notification letter sent for the 21ACEMN001 grant, for example, includes: "Funding and member levels are contingent on successful resolution of any outstanding issues in the sub applications. Please be aware that AmeriCorps does not have an appeal process for its grant competitions."

Previous opinions by the Comptroller General, the timing of when AmeriCorps records obligations, and AmeriCorps' lack of policies and procedures surrounding when grant funds are obligated, raise concerns that obligation of ARP funds for certain grants did not occur until the NGA was issued after the June 3, 2023 rescission of funds.

SUGGESTED ACTIONS FOR AMERICORPS

AmeriCorps should take the following steps to address concerns regarding obligation of rescinded pandemic funds and grant process documentation and policies:

1. Request a formal opinion from the Government Accountability Office (GAO) regarding the point in time at which obligation occurs within its grant process and whether AmeriCorps obligated rescinded ARP funds by issuing Notices of Grant Award after June 3, 2023.
 - a. If GAO concludes that the grant funds at issue were not legally obligated until after June 3, 2023, we recommend that AmeriCorps assess whether it was in violation of the Anti-Deficiency Act and report accordingly for all ARP programs and grant types.
2. Formally define and document what it considers to be an obligating event in its policies and procedures, to include:
 - a. Details on if and how award certifications can be modified or canceled.
 - b. Modifying grantee notification letters to clarify whether approval is a binding and definite commitment by the agency.

¹³ Matter of Denali Comm'n—Overobligation of Apportionment, B-316372, Oct. 21, 2008, citing B-300480, at 4, Apr. 9, 2003.

¹⁴ *Id.* at 1204.

3. Record grants in the financial system when obligated, record the date of the obligation in the financial and grants management system, and update its policies and procedures to reflect this change.
4. Consult with all appropriate authorities, including GAO, if similar questions arise in the future, and document this step in related policies and procedures.

AMERICORPS MANAGEMENT'S RESPONSE TO THE MANAGEMENT ALERT



AmeriCorps

TO: Stephen H Ravas, Acting Inspector General, AmeriCorps OIG

FROM: Michael D. Smith, Chief Executive Officer, AmeriCorps

DATE: January 8, 2025

SUBJECT: AmeriCorps Response to AmeriCorps OIG Management Alert:
Rescinded Pandemic Funds

AmeriCorps appreciates the independent review in the Office of Inspector General's (OIG) draft Management Alert provided on December 20, 2024: Concerns Regarding the Obligation of Rescinded Pandemic Funds and Grant Process Documentation.

Following the statutory rescission of AmeriCorps' unobligated American Rescue Plan (ARP) balances under the Fiscal Responsibility Act of 2023 (FRA), the agency worked to accurately determine the total amounts subject to rescission. AmeriCorps consulted with the Office of Management and Budget (OMB) and ensured that all necessary documentation was in place to justify the rescission totals.

AmeriCorps uses legacy systems for its grant obligations which require transactional activity in three separate systems. The current process to record grant obligations in the agency's financial system is a result of limitations caused by existing legacy systems. AmeriCorps is updating grant commitment and obligation processes as part of its broader modernization efforts. Modernizing these core systems is critical to enhancing AmeriCorps' operational efficiency and addressing longstanding limitations of its existing legacy infrastructure to improve processes, bolster compliance, and strengthen our ability to deliver on our mission.

AmeriCorps would like to acknowledge and respond to two primary concerns the OIG outlined in the alert:

1. Opportunities Exist for AmeriCorps to Improve its Documentation and Recording of All Key Steps in the Grant Making Process, Including Grant Obligation Activity

AmeriCorps partially concurs. AmeriCorps' documentation of the American Rescue Plan Act award obligations is compliant with both governmentwide requirements and the agency's Award Decision Documentation policy. Also, as part of the Financial and Operational Reform (FOR) plan, AmeriCorps is undergoing steps to more fully document all steps of the grants lifecycle and implement process and system improvements to achieve more efficiency.

AmeriCorps previously provided additional materials to the OIG, inclusive of an overview of the FOR grants lifecycle documentation and its process improvement plan. Materials for the pre-award stage of the grants lifecycle, which includes the award obligation steps, are in the final stages of development. The agency



anticipates that those materials will be approved and available to share with the OIG by the end of the FY 2025 Q2.

2. Over \$144 Million in AmeriCorps ARP Funds Are At Risk of Having Been Obligated After They Were Rescinded

AmeriCorps does not concur. The prompt steps that AmeriCorps took, in close communication and consultation with the OMB, to identify obligated funds and rescind unobligated balances, adhered to the requirements of the Recording Statute and the FRA.

An agency incurs an obligation when it makes a definite commitment of government funds or takes an action that could mature into a liability by virtue of actions by other parties beyond the government's control. B-316372, Oct. 21, 2008; see also GAO, A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP (2005), at 70. In the context of discretionary grants, GAO has repeatedly stated that obligation occurs "at the time of grant award." E.g., B-316372, Oct. 21, 2008; B-300480, Apr. 9, 2003; B-289801, Dec. 30, 2002. GAO has expressly acknowledged that "[t]he particular obligating document may vary and may even be in the form of an agency's approval of a grant application or a letter of commitment." B-289801, Dec. 30, 2002 (emphasis added). Thus, while an award letter may constitute the obligating document in some cases, GAO acknowledges that other forms of documentation, including the mere "approval of a grant application", are legally sufficient.

Accordingly, agencies have discretion and options in determining which writings they may deem an obligating document. In this instance, prior to the June 2023 enactment of the FRA, AmeriCorps legally obligated the ARP funds when the agency issued the grant notification letters.

Finally, the approximately \$144 million of obligation activities within the agency's financial system reflect the lagging impact of the legal obligation. They do not reflect that any obligations occurred after the rescission.

AmeriCorps is providing the following response to the four recommendations contained within the alert:

- 1. Request a formal opinion from the Government Accountability Office (GAO) regarding the point in time at which obligation occurs within its grant process and whether AmeriCorps obligated rescinded ARP funds by issuing Notices of Grant Award after June 3, 2023.**
 - a. If GAO concludes that the grant funds at issue were not legally obligated until after June 3, 2023, we recommend that AmeriCorps assess whether it was in violation of the Anti-Deficiency Act and report accordingly for all ARP programs and grant types.**



AmeriCorps Response:

AmeriCorps does not concur. The actions the agency has taken to assess the time of obligation, which included extensive consultation with OMB, are sufficient.

2. Record grants in the financial system when obligated, record the date of the obligation in the financial and grants management system, and update its policies and procedures to reflect this change.

AmeriCorps Response:

AmeriCorps partially concurs. The modernized grants system will record obligations at the time of the legal obligation. It is the agency's position that an obligation occurs when the agency issues the grant notification letters. While amounts specified in the award packages can be subject to change as the sole result of applicant action or non-action, once the obligation is made, it is legally binding. To reach this conclusion, AmeriCorps completed a legal analysis in consultation with OMB.

AmeriCorps believes that its current processes, policies, and procedures are sufficient as the agency works to implement the associated changes as part of the FOR plan and modernize its grants system.

3. Formally define and document what it considers to be an obligating event in its policies and procedures, to include:

- a. Details on if and how award certifications can be modified or canceled.**
- b. Modifying grantee notification letters to clarify whether approval is a binding and definite commitment by the agency.**

AmeriCorps Response:

AmeriCorps partially concurs. AmeriCorps believes that its current processes, policies, and procedures are compliant. However, the agency agrees that there is a benefit to providing further clarifying agency award documentation, including in award packages and notification letters to grantees.

In that light, AmeriCorps has added the following statement to award packages approved within the last year, which aligns with the agency's long-standing controls, to indicate when award obligations can and cannot be changed: *"Grant amounts cannot be modified (a) upwards without a new package being cleared and awarded by the CEO and (b) downwards by the agency except in response to grantee action (e.g., the grantee withdraws, loses tax-exempt status, does not have an active SAM registration, reduces its budget, does not adequately resolve identified risk or compliance items pre-award, etc.)."* AmeriCorps will update the Award Decision Documentation policy to explicitly require this language in all award decision memos.

Grantee notification letters state the amounts for which grantees have been approved. In follow up to this recommendation, AmeriCorps will add the following sentence to notification letters issued after March 1, 2025: *"This notification is a binding and*



definite commitment by AmeriCorps and cannot be modified (a) upwards without another award approval or (b) downwards by the agency except in response to grantee action (e.g., the grantee withdraws, loses tax-exempt status, does not have an active SAM registration, reduces its budget, does not adequately resolve identified risk or compliance items pre-award, etc.)."

AmeriCorps views the above actions sufficient to address the recommendation.

4. Consult with all appropriate authorities, including GAO, if similar questions arise in the future, and document this step in related policies and procedures.

AmeriCorps Response:

AmeriCorps partially concurs. As stated previously, AmeriCorps consulted with OMB regarding the agency's legal definition of an obligation. AmeriCorps views its actions and practices as sufficient to address the recommendation. Moving forward, AmeriCorps will update or develop policies and procedures as necessary to ensure clarity between legal obligations and obligations recorded in the system.

In conclusion, AmeriCorps takes its fiscal responsibilities seriously and remains fully committed to ensuring compliance with applicable laws, regulations, and other relevant requirements while providing sufficient oversight to its grant portfolio. We appreciate the OIG's ongoing feedback and efforts to support the continuous improvement of the agency.

Michael D. Smith
Chief Executive Officer
AmeriCorps