Dated: August 10, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

[FR Doc. 04–18655 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

RIN 3045–AA41

AmeriCorps National Service Program

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') proposes to amend several provisions relating to the AmeriCorps national service program, and to add rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

DATES: To be sure your comments are considered, they must reach the Corporation on or before October 12, 2004.

ADDRESSES: You may mail or deliver your comments to Kim Mansaray, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. You may also send your comments by facsimile transmission to (202) 565–2767, or send them electronically to *proposedrule@cns.gov* or through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov.* Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC headquarters.

FOR FURTHER INFORMATION CONTACT: Kim Mansaray, Docket Manager, Corporation for National and Community Service, (202) 606–5000, ext. 236. TDD (202) 565–2799. Persons with visual impairments may request this proposed rule in an alternative format.

SUPPLEMENTARY INFORMATION:

I. Invitation To Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations in room 8417, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

In addition, the Corporation is planning five public meetings and three conference calls during August and September for purposes of soliciting input on this proposed rule. Please visit our Web site at *http://www.americorps.org/rulemaking* for information on the dates, places, and times of these meetings and calls.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Under the National and Community Service Act of 1990, as amended (hereinafter ''NCSA, or the Act,'' 42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides education awards to and certain interest payments on behalf of AmeriCorps participants who successfully complete a term of service in an approved national service position.

On February 27, 2004, President Bush issued Executive Order (E.O.) 13331 aimed at making national and community service programs better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to faith-based and grassroots organizations. The E.O. directed the Corporation to review and modify its policies as necessary to accomplish the goals of the E.O.

In the Consolidated Appropriations Act for 2004, Congress required the Corporation to reduce the Federal cost per participant in the AmeriCorps program and to increase the level of matching funds and in-kind contributions provided by the private sector. The Conference Report accompanying the 2004 Consolidated Appropriations Act directed the Corporation to engage in notice and comment rulemaking around the issue of ''sustainability.''

On September 23, 2003, the Corporation's Board of Directors (the Board) directed the Corporation to ''undertake rulemaking to establish regulations on significant issues, such as sustainability and the limitation on the Federal share of program costs, consistent with any applicable directives from Congress.'' On June 21, 2004, the Board approved draft specifications for the proposed rule, and directed the Corporation to develop and submit a proposed rule based on those specifications.

The Corporation is initiating two separate rulemaking processes in 2004. This first one will address significant and time-sensitive issues with the goal of incorporating them, to the extent practicable, into the AmeriCorps 2005 program year. The second process grows out of a recommendation by the Board's Taskforce on Grant-making and is largely an effort to streamline and improve our current grant making processes. That streamlining effort is already underway, and we plan to issue a Notice of Proposed Rulemaking for that purpose later in the year. These two rulemakings address distinct and separate issues.

III. Preliminary Public Input

On March 4, 2004, the Corporation published a notice in the **Federal Register** inviting informal preliminary public input in advance of rulemaking. The notice outlined the general topics the Corporation was interested in addressing through rulemaking and posed questions for the public to consider in providing input. Following the notice, the Corporation held four conference calls and five public meetings across the country in Columbus, Ohio, Seattle, Washington, Boston, Massachusetts, Washington, DC, and Fort Worth, Texas, to frame the issues and hear public input. Through the hearings, conference calls, and e-mail and paper submissions, the Corporation received responses from nearly 600 individuals, and has used

this input to inform the drafting of this proposed rule.

IV. Proposed Rule

This proposed rule includes a targeted series of reforms designed to strengthen the impact, efficiency, and reach of the AmeriCorps program, our AmeriCorps grantees, and the Corporation. Our primary objectives are to:

- Create a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership;
- Provide consistency, reliability, and predictability for AmeriCorps grantees and State commissions;
- Enhance the demonstrable positive impact of the AmeriCorps program on:
  - Communities and beneficiaries that receive service;
  - Non-profit organizations and community infrastructures that host service; and
  - AmeriCorps members who serve;
- Resolve longstanding issues relating to Federal share, cost per full-time-equivalent member, and sustainability of AmeriCorps projects in a way that minimizes annual uncertainty about grantee funding levels and restrictions; and
- Assure fiscal and programmatic accountability and performance measurement for the Corporation, the AmeriCorps program, and grantees.

In addition, wherever possible, this rule reflects the Corporation's determination to:

- Decrease the bureaucratic and paperwork burdens on Corporation grantees;
- Strengthen the program's ability to respond to State and local needs;
- Engage more community volunteers;
- Include faith-based and grassroots community organizations in all Corporation programs; and
- Invigorate the competitive grant-making process.

Existing and potential AmeriCorps grantees constitute a rich and diverse group of talented and innovative forces for change, with different needs, circumstances, and abilities. Therefore, the Corporation has endeavored, throughout these regulations, to:

- Use competitive criteria to encourage, rather than require, desired actions or activities, wherever possible; and
- Calibrate implementation of the regulatory requirements based on the unique goals, circumstances, and limitations of grantees, including waivers where appropriate.

As announced in the March 4, 2004, **Federal Register** notice, the Corporation is focusing these reforms on five main areas: (1) Sustainability of AmeriCorps programs, including decreasing grantee reliance on Federal funds and decreasing Federal costs per full-time equivalent; (2) Selection criteria; (3) Performance measures and evaluation; (4) Tutor qualifications and requirements for tutoring programs; and (5) Streamlining continuation applications and grant cycles. The following discussion addresses the issues of sustainability and intermediaries generally, and then addresses the specifics of the proposed rule in more detail. Section V of this preamble addresses implementation of the proposed rule, and section VI addresses several policy issues we have considered in light of the public input we received.

Sustainability

The issues about which we received the most input were those relating to sustainability, Federal share, and cost per full-time-equivalent (FTE). Much of the input sought to define sustainability in broad terms, and included many elements, other than finances, as part of the definition. While the Corporation agrees that there are many measures and elements of sustainability, the most recent discussion has focused on the monetary aspects of sustainability—Federal share and cost per FTE.

The Corporation understands that other forms of sustainability are important; they are reflected in the proposed changes to the selection criteria so that an organization achieving sustainability through any or all of those measures will be more competitive when applying for an AmeriCorps grant. But ultimately, we believe that the focus of Congress in this discussion of sustainability is at the organizational or program level—specifically on the financial resources of the organization or program. In other words, how can organizations that the Corporation supports better leverage Federal dollars by expanding and diversifying their non-Federal funding? To the extent that this is a broader question, we would frame it as: how much more national service can AmeriCorps provide across the country with the Federal dollars available to it?

The Corporation's annual appropriations and its authorizing legislation, as well as E.O. 13331, support this approach. In our annual appropriations act each year dating back to fiscal year 1996, Congress directed the Corporation to ''increase significantly the level of matching funds and in-kind contribution provided by the private sector,'' and ''reduce the total Federal costs per participant in all programs.'' Section 130(b)(3) of the Act, as amended, authorizes the Corporation to ask an organization ''re-competing'' for funding after a three-year initial grant period to include a ''description of the success of the programs in reducing their reliance on Federal funds.'' In addition, E.O. 13331 directs that ''national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments.''

While the Corporation is committed to meeting these goals, they do not require imposing limitations on the number of years an organization may receive funds, particularly given the many organizations providing valuable infrastructure and experience that enable national and community service to continue to thrive across the country. At the national level, we do not think it necessary to disqualify an organization from receiving Federal funding based on the number of years that organization has received funding. To do so would result, in future years, in a loss of some of the strongest organizations with the capacity, infrastructure, and experience to provide high-quality service and deliver results that contribute to the strengthening and growth of national and community service. We do believe, however, that most, if not all, organizations that receive Corporation funds can and should contribute a higher share of program costs over time.

The Corporation's objectives in the proposed rule relating to sustainability are to make more resources available in order to increase national service activities and opportunities. In addition, we seek to strengthen existing national and community service programs by encouraging grantees to expand and diversify their non-Federal funding sources while strengthening the competitive framework. At the same time, we want to strengthen the independence, operating flexibility, and autonomy of grantees, and treat grantees fairly and equitably.

The Corporation's strategy to increase organizational sustainability and expand national and community service has six main elements:

1. Incorporates the broad spectrum of sustainability criteria throughout the Corporation's grant selection criteria.
2. Makes an applicant's budgeted Corporation cost per full-time-equivalent (FTE) a more meaningful factor in the selection process. All else being equal, the lower a program's cost per FTE, the better chance it will have to receive Corporation funding. At the

same time, the Corporation will explicitly take into account the goals, performance outcomes, and the individual circumstances of programs and the communities in which they operate, thereby considering both costs and benefits.

3. Increases, based on a predictable and incremental schedule, the grantee share of program costs to a 50 percent aggregate level by the 10th year in which an organization receives an AmeriCorps grant for the same program.

4. Expects State commissions to develop and implement a sustainability approach as part of their oversight function.

5. Reserves a percentage of non-continuation AmeriCorps State and national grant funds each year for applicants that have not received AmeriCorps competitive funding from the Corporation for at least five years.

6. Builds meaningful tools, including limited exceptions, for accommodating organizations that have demonstrated hardship in meeting the increasing match requirements.

With the exception of the fourth element—reserving a percentage of non-continuation funds each year for applicants new to the Corporation—we address each of the elements in more detail in the individual section discussions that follow. On the issue of reserving a percentage of funds for applicants new to the Corporation, we anticipate reserving annually a percentage of AmeriCorps funds for grants to new applicants—*i.e.*, applicants who have not received an AmeriCorps State or national competitive grant for at least five years. The Corporation will determine this percentage annually based on the availability of appropriations and the projected number of recompeting applications, and publish this information, including posting it on the Web site at *http://www.nationalservice.org,* in advance of the selection process.

The Corporation believes that its sustainability approach represents a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability. The proposed rules are authorized by, and consistent with, our enabling legislation, and strike a reasonable balance between our objectives of supporting and strengthening high-quality programs while leveraging Federal resources to achieve the greatest benefit possible for our nation's communities. Predictability and consistency are crucial elements of this rulemaking. Thus, we seek to provide clear guidance to our grantees on our long-term expectations for sustainability, which we believe decisively resolves the ongoing discussion on the issue.

Intermediaries

The Corporation received a substantial amount of input regarding intermediaries and, in particular, the potential effect of efforts to promote sustainability on those entities. We believe that there is and should continue to be a prominent place for intermediaries in the national and community service portfolio, particularly given their important role in reaching faith-based and small community-based organizations. The Corporation understands that many intermediary models include a regular infusion of new sites, which, as with any start-up, may have higher costs initially. In designing the selection criteria, we have explicitly included that feature of intermediaries as a possible factor in considering several of the cost-effectiveness competitive factors.

We note, however, that we have set matching requirements at the grantee level, rather than at the placement or operating site level, and we have not adjusted the matching requirements based on the proportion of new sites in any given year. We believe that establishing the matching requirements at the grantee level gives greater flexibility to intermediaries to manage and achieve a mix of new and older sites.

Specifics of the Proposed Rule

As discussed in more detail below, the proposed rule:

1. Defines the term ''target community'' as the geographic community for which an AmeriCorps grant applicant identifies an unmet need to be addressed.

2. Clarifies the types of service activities in which AmeriCorps members may engage and explains the parameters for grantees and members to engage in capacity-building service activities, including volunteer recruitment and support.

3. Increases, in an incremental and predictable fashion, the grantee's share of program costs to a 50 percent aggregate plateau over 10 years.

4. Codifies that the amount of childcare payments the Corporation makes on behalf of an AmeriCorps member may not exceed the amount provided under the Child Care and Development Block Grant Act of 1990 (P.L. 101–508).

5. Codifies the grant selection process and criteria, and aligns the criteria with indicators of high-quality and sustainable programs.

6. Clarifies how grantees will calculate their budgeted Corporation cost per FTE.

7. Codifies the Corporation's requirements for grantees to establish performance measures and to evaluate program outcomes, and establishes grant size threshold for evaluations.

8. Establishes qualifications for members serving as tutors and requirements for tutoring programs.

9. Prohibits displacement of volunteers.

10. Removes obsolete references to ''transitional entities'' serving as State commissions on national and community service.

11. Broadens State commission flexibility to directly operate national service programs, except to the extent prohibited by statute.

12. Modifies State commission State plan requirements to include a description of their program sustainability approach.

Member Service Activities on Behalf of the Organization (§§ 2520.20 Through 2520.65)

Except for those member activities specifically prohibited in sections 132 and 174 of the Act, as amended, the Corporation has broad authority to determine appropriate service activities for AmeriCorps members. The proposed regulation largely codifies and clarifies the Corporation's current guidelines and grant provisions on this issue. Specifically, this regulation clarifies that AmeriCorps members may: (1) Perform direct service activities, and (2) engage in other activities that build the organizational and financial capacity of nonprofit organizations and communities, including volunteer recruitment and certain fundraising activities.

Volunteer Recruitment

One focus of Executive Order 13331 is leveraging of Federal resources ''to enable the recruitment and effective management of a larger number of volunteers than is currently possible.'' The proposed regulations more clearly direct that some component of an AmeriCorps grant must help build the long-term capacity of nonprofit organizations and the community by recruiting and supporting volunteers. While this has implicitly been a requirement over the past two years, clarifying and reinforcing this requirement is expected to encourage more Americans to engage in service and volunteer activities, and advance President Bush's call to service.

The Corporation does not, however, intend for this requirement to distract from an organization's mission, nor is our goal to replace direct service with volunteer generation and other capacity-building activities. In most cases, direct service and volunteer leveraging can complement each other to strengthen programs and communities. When considering how an AmeriCorps program can promote the effective involvement of volunteers, applicants have the flexibility to determine the best way to enhance or build upon the direct service goals of the program in which the AmeriCorps members are serving and to propose capacity-building activities accordingly.

The Corporation recognizes, however, that some program models, such as certain professional corps, youth corps, and programs in some rural locations with a limited volunteer pool, may not be able to include volunteer recruitment and support in their program model, and the Corporation will take these factors into account in considering requests to waive the volunteer leveraging requirement.

Fundraising

The proposed regulation also clarifies that AmeriCorps members may help organizations raise funds directly in support of service activities that meet local environmental, educational, public safety, homeland security, or other human needs. Members may participate in a wide range of fundraising activities if these activities make up only a relatively small amount of any individual member's overall service hours. Members may write grant applications excepting those for AmeriCorps or any other Federal funding.

The rule's provisions governing fundraising are more flexible for AmeriCorps members than those for grantee staff, which are subject to Federal cost principles described in the Office of Management and Budget Circulars that generally disallow costs incurred in organized fundraising. The Corporation believes that these activities will enhance the use of AmeriCorps members to build the capacity of nonprofit organizations, as well as advance the professional development of the members themselves.

Finally, the rule codifies the Corporation's existing so-called ''80/20'' rule, which limits a program's aggregate number of hours for education and training activities to not more than 20 percent of its members' total service hours. The rule also clarifies that capacity-building activities count towards the 80 percent and not the 20 percent education and training hours.

Increase in Grantee Share of Program Costs (§§ 2521.40 Through 2521.60)

Sections 121 and 140 of the Act, as amended, establish a ceiling on the Corporation share for program operating costs and the Federal share for member support costs of 75 percent and 85 percent, respectively. In other words, at a minimum, the statute requires an AmeriCorps grantee to provide not less than 25 percent of operating costs, and 15 percent of member support costs. While the Act does not allow the Corporation to decrease the grantee share requirements below the statutory minimum, the Corporation has the discretion under the statute to increase the grantee share of costs, and did so in 1996, when we increased the grantee share of operating costs from 25 percent to 33 percent.

As discussed earlier, the Corporation believes that the essence of the current public discussions of sustainability relates to the financial resources of our grantee organizations. Section 130 of the Act, as amended, explicitly authorizes the Corporation to ask an organization applying for renewal of assistance (''recompete'' funding) after an initial three-year grant period to describe how it has decreased its reliance on Federal funding. In addition, in our annual appropriations act each year dating back to fiscal year 1996, Congress has directed the Corporation to ''increase significantly the level of matching funds and in-kind contribution provided by the private sector,'' and to ''reduce the total Federal costs per participant in all programs.'' Finally, E.O. 13331 directs that ''national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments.''

Consequently, this proposed rulemaking would increase, in a predictable and incremental fashion, the grantee share of program costs to a 50 percent aggregate level in the 10th year that an organization receives an AmeriCorps grant. Each grantee will be required to meet the current minimum requirements of 33 percent match (cash or in-kind) for operating costs and 15 percent match (non-Federal cash only) for member support costs. After meeting those minimum requirements, the grantee may meet the balance of its aggregate share of costs through any combination of operating or member support matching funds. The grantee aggregate share will apply beginning in the fourth year and increase in each year thereafter in which an organization receives a program grant as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Minimum Aggregate Share	N/A	N/A	N/A	26%	30%	34%	38%	42%	46%	50%

The proposed rule establishes that a current grantee who has received an AmeriCorps grant for 4 years or more, must begin meeting the match requirements at the year three-level. For the first two years, that organization will be required to meet current, or marginally higher, match requirements, before its required share begins to increase more systematically.

The Corporation intends to provide training and technical assistance to grantees to assist them in achieving their matching goals. For example, we may provide training on documenting in-kind match to enable grantees to maximize their ability to use in-kind towards their overall matching requirements. We will consult with grantees to determine the most useful and appropriate training and technical assistance.

We believe, based on our research into current grantee match levels, that it is reasonable to expect all grantees, even those operating in remote or impoverished communities, to achieve this level of matching, and we expect State commissions to continue managing their portfolios to achieve even higher match levels. However, to the extent that an organization is unable to achieve or increase its share of costs, we intend to consider targeting the following assistance to organizations that are demonstrably at risk of not meeting the matching requirements:

1. Providing additional training and technical assistance: The Corporation plans to provide training and technical assistance to help grantees identify new strategies to raise matching funds and community support.

2. Redirecting Corporation assets: The Corporation will consider using, on a

short-term basis, other program assets to help an organization struggling to meet its match requirements. For example, we might temporarily allocate a VISTA member to help build the capacity and broaden the community support of a VISTA-eligible organization.

3. Conducting Corporation outreach to the regional and national philanthropic community: The Corporation will seek to broaden its outreach to the philanthropic community to promote those national and community service programs that are potentially at risk and explain the impact of the changes we are implementing.

4. Allowing State commission portfolio flexibility: If a subgrantee of a State commission is not meeting its minimum matching requirements, we are providing the State commissions the ability to make up for the short-fall in a low-matching grantee's matching funds by pairing that grantee up with one or more grantees that are meeting more than the required level of matching funds. This will provide some flexibility to State commissions to manage their formula and, to some extent, competitive portfolios, while effectively reducing Federal share.

5. Allowing a waiver: On a limited basis, the Corporation will use its current statutory waiver authority for those satisfactorily performing and otherwise compliant programs that demonstrate an inability, in spite of reasonable efforts, to achieve sufficient financial support to meet the increased matching requirements. This waiver would be granted on an annual basis and subject to revision or revocation based on grantee performance and resources.

The Corporation believes the increased match requirements, together with the measures described above that are designed to assist grantees in meeting the new requirements, represent a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability, such that additional measures in annual appropriations bills, or through rulemaking, are not necessary. We intend to make public information on an annual basis reporting the progress that grantees are making in leveraging Federal resources.

Codifying the Cap on Child-Care Payments (§ 2522.250)

Section 140(e) of the Act, as amended, authorizes the Corporation to establish guidelines on the availability and value of child-care assistance. By current regulation, child-care payments for AmeriCorps State and National members are ''based on'' amounts authorized under the Child Care and Development Block Grant of 1990. The Corporation is proposing to eliminate any ambiguity in the current language by explicitly capping the amount of child-care benefits for any individual AmeriCorps member at the level established by each State under the Child Care and Development Block Grant.

AmeriCorps Grants Selection Process and Criteria (§§ 2522.400 Through 2522.470)

In addition to establishing specific AmeriCorps grant application requirements, section 130 of the Act, as amended, gives the Corporation broad authority to set additional application requirements and to establish the selection process. We are proposing adjustments to our grant selection criteria to meet three objectives: (1) To better align the selection criteria with elements that predict program success; (2) To incorporate into the selection criteria greater emphasis on sustainability; and (3) To provide transparency, predictability, and consistency for organizations applying for AmeriCorps funds.

The proposed rule describes the Corporation's processes and criteria for selecting grantees. In selecting AmeriCorps programs, the Corporation generally needs to know four things: (1) An organization's plan and its expected outcomes; (2) Whether the organization has the capability to manage Federal funds, and operate and support the proposed program; (3) The cost implications of the proposed program; and (4) For an existing program, whether the organization has implemented a sound program, including achieving strong outputs and outcomes, organizational capability, and cost-effectiveness.

To address these issues, the proposed rule modifies the current structure of three overall categories of criteria—Program Design, Organizational Capability (formerly Organization Capacity), and Cost-Effectiveness (formerly Budget/Cost-Effectiveness). We have adjusted the weights of the three categories to better balance program design against organizational strength, which is reflected through organizational capability, and cost-effectiveness. Consequently,

- Program Design is 50 percent of the score (as opposed to 60 percent currently),
- Organizational Capability remains at its current 25 percent weight, and
- Cost-Effectiveness is 25 percent (as opposed to 15 percent currently).

The Corporation's focus within Program Design is now on the relationship between an applicant's rationale and approach, and the outputs and outcomes to be achieved for members and the community. Most of the criteria from the Corporation's current AmeriCorps 2004 guidelines remain part of the revised selection criteria, although they may now appear under a different category. (Please visit our Web site at *http://www.nationalservice.org* to view the AmeriCorps 2004 guidelines). We have also added criteria across all three categories to better reflect our focus on outcomes and sustainability. With respect to financial sustainability, we have included a specific criterion on Corporation cost per FTE, so that, all things being equal, an applicant proposing a lower cost per FTE will be more advantaged in the selection process, in the context of fully weighing the benefits, contributions and circumstances of each program.

In applying the selection criteria, the Corporation intends to ensure, to the maximum extent possible, that similar program models are evaluated together. This will help to ensure equity and fairness. The proposed rule would allow the Corporation to also consider relevant information it has received or that is otherwise available during the grant review process—the proposed rule sets out in detail the type of information that the Corporation may choose to consider.

After the Corporation applies the basic selection criteria, we may then apply one or more of the Corporation's selection priorities, as described in this proposed rule. The Corporation may also announce additional priorities in the Notice of Funding Availability, or other notice to the public. Our intent, however, in codifying the selection priorities in these regulations is to provide transparency and baseline consistency for current and prospective grantees. This list of selection priorities reflects several long-standing Board priorities as well as new priorities that we believe are appropriate as a matter of policy—and for the Programs Supporting Distressed Communities, as a matter of law.

The proposed rule reaffirms that the Corporation will seek to ensure innovation and diversity across its portfolio of AmeriCorps programs. In addition, we are requiring State commissions to prioritize their State competitive proposals in rank order to help inform our selection process. While the Corporation will not be bound by the commissions' rankings, we may consider them when making

funding decisions. We may, in the future, choose to limit the number of proposals any one State may submit for State competitive funding to streamline the selection process and make optimal use of outside peer review panels. If so, we will announce the limitation in the appropriate Notice of Funding Availability.

The input we received raised some questions over State commission peer review requirements and why the Corporation conducts peer reviews of proposals that State commissions may have already peer reviewed. While the regulatory language does not specify this, we wish to clarify that the Corporation does not require State commissions to peer review AmeriCorps State competitive proposals. The Corporation conducts peer reviews of those proposals at the national level to ensure equitable consideration of all applications. However, a State commission may be required, under State law, to peer review proposals, or it may choose to do so on its own.

Cost Per Full-Time-Equivalent (FTE) (§ 2522.485)

As discussed earlier, the proposed rule strengthens the Corporation's basic selection criteria, and explicitly includes a program's proposed Corporation cost per FTE as an indicator of cost-effectiveness at § 2522.435. The proposed regulations also quantify an individual program's Corporation cost per FTE. For individual programs, the Corporation cost per FTE is the budgeted grant costs divided by the number of member FTEs awarded in the grant. The budgeted grant costs exclude: (1) Child-care for individual members, for which the Corporation pays directly; and (2) The education award a member may receive from the National Service Trust after fulfilling a term of service.

The Corporation will announce annually any changes in a program's Corporation cost per FTE. We anticipate that making cost per FTE a competitive factor and gradually decreasing the Federal share of grantee costs will cause the cost per FTE for most programs to decrease over time. Generally, however, the Corporation will consider granting continuation and recompete program requests to increase their Corporation cost per FTE up to the statutorily-required percentage increase in their previous year's AmeriCorps member living allowance. (42 U.S.C. § 12594(a)).

The Corporation will continue to hold State commissions and national direct grantees to a maximum average Corporation cost per FTE. State commissions and national direct grantees will calculate their portfolio's average Corporation cost per FTE by dividing the budgeted grant costs for all their AmeriCorps programs by the number of member FTEs awarded across their portfolio of AmeriCorps programs, including Education Award programs. The budgeted grant costs do not include child-care for individual members, the education award a member may receive from the National Service Trust for fulfilling a term of service, or non-program grant funds such as a State commission's administrative grant or Program Development and Training (PDAT) funds. We encourage State commissions and national direct grantees to use the Education Award Program as a way to lower their average Corporation cost per FTE, to the extent feasible while maintaining high quality programs.

Currently, the average cost per FTE for each commission includes the formula funds they use for planning grants. Some of the input suggested that the Corporation give States more leeway to use planning grants to foster new AmeriCorps programs by taking the cost of planning grants out of the average cost per FTE calculation for each commission. The Corporation is considering allowing commissions, in calculating their average Corporation cost per FTE, to exclude some amount of planning grants from their budgeted grant costs, in an amount to be determined by the Corporation each year. The Corporation plans to study the budgetary and National Service Trust implications of this approach in the coming months. However, we invite the public to suggest other ideas for expanding the use of planning grants.

The Corporation will announce in the **Federal Register** and on its Web site at *http://www.nationalservice.org* the annual maximum average Corporation cost per FTE for State commissions and national direct portfolios. For the 2004 and 2005 program years, the maximum average Corporation cost per FTE for both State commissions and national directs will remain at the current level of $12,400. The Corporation recognizes that the member living allowance may increase and we will review the maximum average cost per FTE annually with this and other changes to program costs in mind.

While we acknowledge that cost per FTE may be defined in several different ways, our proposed calculations of Corporation cost per FTE are primarily to enable grantees and subgrantees to manage Corporation costs at the program and State commission level, and to estimate costs for the grant selection process.

Performance Measures and Evaluation (§ 2522.500 Through 2522.740)

To ensure that the Corporation continues to demonstrate the true impact of national service, and that programs continue to improve, as well as to fulfill the expectations laid out in the Government Performance Results Act of 1993 and OMB's Program Assessment Rating Tool (or PART), we are continuing to build on the progress we have made in demonstrating results. The proposed rule codifies the Corporation's current requirements for performance measurement, focuses independent evaluation requirements on large grantees, and generally reflects current Corporation practice. In addition, the proposed rule clearly describes the relationship between performance measures, evaluations, and funding decisions. The Corporation believes that a stronger emphasis on performance measurement and evaluation will strengthen AmeriCorps programs and foster continuous improvement. In line with E.O. 13331, emphasizing performance measures and evaluation will also help us identify both best practices and models that merit replication, and programmatic weaknesses that can be corrected most effectively when identified early.

The proposed rule distinguishes performance measurement from program evaluation, while making explicit that grant funds used to pay for either activity are not considered ''administrative costs'' or subject to the 5 percent statutory cap. A grantee would be allowed to use grant funds to pay for performance measurement and evaluation up to the approved amounts for such activities in its grant.

While the proposed rule allows an applicant organization to propose and negotiate performance measures unique to the applicant's program, the rule provides that the Corporation will establish one or more national performance measures on which all grantees would have to report. The Corporation will establish a national performance measure on volunteer leveraging, and may establish performance indicators of member satisfaction. The Corporation will develop national standardized performance measures in consultation with AmeriCorps grantees.

Section 131(d)(1) of the Act specifies that an applicant must arrange for an independent evaluation of an AmeriCorps national service program receiving assistance under Subtitle C of Title I of the Act, unless the applicant obtains Corporation approval to conduct an internal evaluation. The statute also

authorizes the Corporation to make alternative evaluation requirements ''based upon the amount of assistance'' a grantee receives.

In light of these provisions, the Corporation is revising its current requirement that all grantees arrange for evaluations every 4 years. The proposed rule requires that only grantees receiving an average annual program grant of $500,000 or more conduct an evaluation that covers a period of at least 5 years, and submit the evaluation results with their application for recompete funding. The Corporation intends to strictly enforce this requirement. Our rationale for this approach is that it is burdensome to require evaluation for smaller grants, and, for larger grants, we want to give a grantee enough time to complete a rigorous evaluation, and ensure that the Corporation receives it in time to consider with a grantee's second recompete application for funding. The Corporation will not consider for funding any recompete application that does not include the required evaluation summary, or results, as applicable.

For grantees that do not meet the dollar threshold, the Corporation encourages (but does not require) them to perform evaluations and may consider the results of these evaluations when making decisions on an organization's application for funds. See our Web site (*http://www.nationalservice.org*), under the AmeriCorps application guidelines and AmeriCorps application instructions for the relevant program year for information on how to submit evaluation materials.

To continuously improve the results of programs for both participants and the people they serve, we encourage all grantees to provide for evaluations as part of their programs.

Qualifications for Members Serving as Reading Tutors and Requirements for Tutoring Programs (§§2522.900 Through 2522.950)

E.O. 13331 directs that school-based national and community service programs ''should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services.'' The Corporation believes strongly that it is important to maintain consistency with the No Child Left Behind Act (NCLBA) and ensure that children who need tutoring are receiving the best possible support.

At the same time, we recognize that thousands of AmeriCorps members are providing invaluable support to children through a wide range of activities. In setting qualifications, we have narrowly defined ''tutor'' in these regulations to include only individuals whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group reading, or other small-group sessions, that build on students' academic strengths and target students' academic needs. We do not intend to establish qualifications for national service participants who engage in other school-related support activities, such as homework help provided as part of a safe-place-after-school program.

The proposed rule also confirms that the qualification requirements for tutors and other paraprofessionals under the NCLBA apply to tutors who are employees of the Local Education Agency (LEA) or school, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school district.

Under the NCLBA, paraprofessionals who provide instructional support in Title I schools must have a secondary school diploma or its equivalent and must have: (a) Completed two years of study at an institution of higher education; or (b) Obtained an associate's or higher degree; or (c) Met a rigorous standard of quality and be able to demonstrate the appropriate and relevant job skills through a formal State or local academic assessment. As stated above, these requirements apply only to tutors who are employees of the LEA or school, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school.

For a member serving as a tutor, *other than one employed by the LEA or school*, the proposed rule requires either that the member has a high school diploma (or its equivalent), or that the member passes a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program.

In addition, tutoring programs are required to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision. We believe that these requirements will help improve the overall quality of tutoring and literacy programs in which AmeriCorps members serve.

Non-Displacement of Volunteers (§ 2540.100)

The Corporation's focus has always been, pursuant to the Act, to fund programs meeting unmet needs in their communities. The non-displacement rules are one way to ensure that programs are meeting unmet needs, rather than needs that employees or volunteers are meeting already. Consequently, we are proposing to clarify, in the regulation, that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community. This clarification is consistent with the directive in E.O. 13331 that national and community service programs avoid or eliminate any practice that displaces volunteers.

Transitional Entities (§§ 2550.10 Through 2550.80)

The National Service Trust Act of 1993 and the Corporation's regulations, originally issued in 1994, contemplated the existence of transitional entities, in addition to State commissions and alternative administrative entities, as State bodies that could be eligible to receive Corporation funding and administer national service programs on an interim basis. The provisions relating to transitional entities, however, sunsetted 27 months after the passage of the Act, or December 1995. The proposed rule amends the regulations to remove any obsolete references to transitional entities.

State Commission Sustainability Approaches (§ 2550.80(a)(3))

Part of the Corporation's sustainability strategy is to build upon what some States are already doing in the sustainability arena. Through the public input process and follow-up discussions, we learned that roughly one-quarter of the State commissions have written sustainability policies or approaches through which they promote sustainability and encourage new programs in their States. Some States, for example, gradually and predictably reduce their programs' Corporation cost per FTE over 12 years, to allow the commission to invest funds in new programs and encourage on-going programs to develop efficiencies and enhance community support. Other State commissions require, among other things, that their subgrantees develop their own sustainability plans, and increase the subgrantee share of program operating costs over a seven-year period to 75 percent. Some States, in addition to requiring a small increase in program share of member support

costs over a three-year period, actively solicit private donations to use, in part, to help AmeriCorps programs meet corporate donors and improve private support.

We expect these States to continue their sustainability efforts, and other States to begin planning how they can help make national and community service sustainable at the state level. For this reason, the proposed rule requires each State to describe its sustainability approach in its State plan. To address this requirement, States will need to consider how best to use the Corporation's sustainability approaches in conjunction with State needs to achieve sustainable national and community service programs, and the Corporation will have the opportunity to learn from what the States are doing and to share best practices.

State Commissions Directly Operating Programs (§ 2550.80(j))

The Corporation proposes to ease the restriction on State commissions directly carrying out national and community service programs. Under the Act, a State commission or alternative administrative entity may not directly carry out any national service program that receives assistance under subtitle C. 42 U.S.C. 12638(f). Currently, however, 45 CFR 2550.80 goes further than the statute by prohibiting State commissions from directly operating *any* national service program receiving assistance, in any form, from the Corporation. This means that, currently, a State commission is prohibited from operating not only a subtitle C AmeriCorps program, but also any subtitle H, Learn and Serve, or Senior Corps program. The Corporation is relaxing the restriction by amending the regulations to conform to the Act and to give commissions more flexibility to directly operate programs other than subtitle C AmeriCorps programs.

V. Effective Dates

The Corporation intends to make any final rule based on this proposal effective no sooner than 30 days after the final rule is published in the **Federal Register**. We will include an implementation schedule in the final rule, based on the final rule's date of publication.

VI. Significant Non-Regulatory Issues

The Corporation announced in its March 4, 2004 **Federal Register** notice that we would not respond to the input we received during the preliminary input process, but that we would use it to inform our drafting process. That said, we received sufficient input on certain issues that we feel we should address here, even in the absence of regulatory language.

A. Streamlining Grantee Requirements and Aligning Them With Grantee Needs

Much of the public input we received focused on suggestions for streamlining our grant application and grant-making processes, and streamlining and aligning with grantee needs our reporting and other requirements. The following are some of the issues we considered and our response.

Revising the Timing of the Grant Cycle

During the preliminary public input process, we heard that our current grant calendar is not optimal for many organizations with start dates in the fall. To the extent that appropriations are made available, we intend to move application deadlines and grant awards to earlier in the fiscal year. Our goal is to execute grant awards to allow grantees as much time as possible from the time they receive the grant to the date that they start their programs. Part of this process will also include revisiting our current application requirements to tailor them more closely to the information we reasonably need to make decisions.

The Corporation received several requests to authorize grantees to allow members to begin serving before we actually execute the grant award. By law, the Corporation cannot meet this request. The Strengthen AmeriCorps Act re-emphasizes the statutory requirement that the obligational event for an education award is the execution of the grant award. Thus, we cannot allow programs to enroll members before we have *awarded* both the grant and the member FTEs associated with the grant.

Streamlining Continuation Grants and Reporting Requirements

Section 130 of the National and Community Service Act of 1990, as amended, authorizes the Corporation to determine the timing and content of applications for AmeriCorps funding. The public input we received overwhelmingly indicated that we should streamline our current process for applying for continuation funding in years two and three of a three-year grant period. We agree and intend to change our continuation application requirements to minimize the burden on grantees, while ensuring that the Corporation receives the information it needs to make fiscally responsible continuation awards. Our intent is to streamline the application, reporting requirements, and the review process for continuations, as well as to give grantees more predictability over the three-year grant cycle.

We propose:

- Allowing grantees, generally, to request their continuation award on a rolling basis, according to their needs, rather than by a specific due date;
- Requiring grant applicants to submit a three-year budget and three-year plan for performance measures with their initial application for funding, and to update it annually when they request additional funds for years two and three of the grant;
- Requiring grantees to submit their progress report and, if applicable, a narrative describing any proposed changes in the scope of the program with their request for continuation funding;
- Eliminating the requirement that grantees submit a new SF 424 Face sheet, a complete program narrative, and other information that we determine to be unnecessary; and
- Eliminating the requirement that State commissions provide annual summaries, and other information we determine to be unnecessary for their State competitive programs.

Accordingly, the Corporation will be revising and streamlining many of the information collection requirements related to grant applications. The Corporation intends, to the maximum extent possible, to award continuation grants within one month of a grantee's request, or within one month of the Corporation's receipt of its annual appropriation, whichever is later. This means that, as a general rule, the Corporation intends to award continuation requests on a rolling basis, rather than requiring all applications to be submitted on a specific day and considering them at the same time. We intend to work with State commissions on a schedule that accommodates the different start dates of programs within a State's portfolio. Because of the uncertainties of annual appropriations, however, we are reviewing how this process would affect continuation requests that include an expansion request (including both requests for more program funds and requests for more member FTEs), and may establish an alternate timetable for considering those requests.

The Corporation intends to approve continuation requests based on:

1. The Grantee's satisfactory performance, as demonstrated in the progress report and other information the Corporation may have obtained;
2. Whether the grantee is in compliance with its grant provisions;
3. Any proposed changes to the grantee's program or budget; and

4. The availability of appropriations.

To make this new process work, the Corporation intends to tie reporting requirements, such as the progress report, to the start date of individual grants, rather than setting an arbitrary deadline for all grantees. We anticipate issuing a three-year schedule of reporting due dates with each initial grant award so that the grantee will know what is expected at the outset. This will also ensure that the Corporation receives the reports at the optimal point in time for making funding decisions. In addition, we are committed to focusing and streamlining our current reporting requirements to reduce grantee burden.

In sum, these anticipated changes are expected to decrease the burden on grantees, increase the efficiency of the grant-making process, and increase the utility of what grantees report. We will inform our grantees once we have finalized our continuation request processes.

Providing Three-Year Funding for Three-Year Grants

The input we received indicated a strong preference for providing three years of funding up front to a grantee. However, funding three-year grants up front would necessarily decrease the size of the national service field, at least initially, as we would only be able to award about a third of the annual grants we award now. We, therefore, decline to accept this suggestion and do not anticipate providing three years of funding up front for a three-year grant.

Clarifying and Streamlining Guidance

As mentioned earlier, the Corporation is initiating a second rulemaking process this year to rewrite and reorganize our current regulations, and streamline and incorporate the grant provisions and guidelines into regulation. We believe that this will result in much clearer, more focused, and transparent guidance for applicants and grantees and a decrease in grantee burden.

B. Maximizing a Grantee's Ability To Meet Objectives and Achieve Strong Outcomes

Re-Fill Rule

Since last year, the Corporation has prohibited programs from re-filling a slot when a member left without completing a term of service. We received a significant amount of input asking that we revisit this policy. We are still examining this possibility for the 2004 program year and will issue more specific guidance on this issue in the near future. We will address this issue outside of rulemaking.

Challenge Grants

Many individuals who provided input saw challenge grants as a way to increase the capacity of the national and community service field. The Corporation supports making challenge grants under certain circumstances. Under the VA/HUD appropriation, however, challenge grants are currently authorized and funded under subtitle H of the Act, as amended, and are not available for the purpose of supporting AmeriCorps programs. To date, we have not had authority in our appropriations statute to fund challenge grants with AmeriCorps State and National funds and are, therefore, unable to accept this suggestion.

Professional Corps

The Corporation received a substantial amount of input on behalf of professional corps grantees requesting separate application guidelines and requirements for professional corps programs. We have concluded that we do not need to establish separate guidelines in regulation. The Corporation believes, however, that professional corps programs, particularly those for which the cost is largely borne by sponsoring organizations, will continue to compete well in our AmeriCorps grant competitions. By using an ''apples to apples'' approach during our selection process, we will ensure, to the maximum extent possible, that we evaluate professional corps programs together. In addition, for a program able to demonstrate the requirement to leverage volunteers is a fundamental program structure alteration, we will consider a request to waive such leveraging requirement.

Finally, we recently issued a Notice of Funding Availability directed only at professional corps, and would consider doing so again in the future.

C. Improving the AmeriCorps Member Experience

We received input from current and former AmeriCorps members asking us to focus on their experience and the resources available to them. The Corporation has a strong interest in the AmeriCorps member experience and intends to further explore ways to improve it.

In particular, we intend to explore creating a member satisfaction survey through which AmeriCorps members would be able to evaluate their programs and their AmeriCorps experience.

D. Issues That the Corporation Cannot Address Under Current Law

The Corporation received many suggestions for reforms that it is unable to address without legislation. The following table lists examples of these proposed reforms and the associated statutory constraints.

Public input proposal	Statutory constraint	Statutory citation
Increase amount of education award	Amount for a full-time term of service is fixed at $4,725	42 U.S.C. 12603(a).
Education award should be exempt from taxation	Internal Revenue Code	26 U.S.C. 1 *et seq.*
Permit transfer of education award	Recipient must be AmeriCorps member	42 U.S.C. 12602.
Permit education award to be used for additional purposes.	Limited to costs of attending Title IV institutions of higher education and repayment of qualified student loans.	42 U.S.C. 12604.
Permit AmeriCorps members to receive more than two education awards as long as the total amount does not exceed the value of two full-time education awards.	Limit is two education awards for the first and second terms of service, regardless of length.	42 U.S.C. 12602(c).
Make payment of education award directly to AmeriCorps member.	Disbursement must be to institution of higher education or loan holder.	42 U.S.C. 12604.
Permit AmeriCorps members to enroll as soon as the grant selections are announced.	Approval of position does not occur until grant award is executed.	42 U.S.C. 12581; 42 U.S.C. 12605.
Increase percentage of grant costs that may be spent on administrative functions.	Limit is five percent of grant amount	42 U.S.C. 12571(d).
Grant period should be up to 5 years	Grant period may not exceed three years	42 U.S.C. 12574.

Executive Order 12866

The Corporation has determined that this rule, while a significant regulatory action, is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The proposed rule requires all grantees and subgrantees of the Corporation to increase, based on a predictable and incremental schedule, the grantee share of program costs. After the initial three-year grant period, a Corporation program in its fourth year of operation must provide at least 26 percent of their overall program budget in matching money. During years five through ten of Corporation sponsorship, the program's required matching percentage increases gradually to 50 percent.

The initial impact of this change will be small. During the 2000–2002 grant period—the most recent three-year period where we have complete data on program budgets—about 20.6 percent of all AmeriCorps grantees and subgrantees had match percentages less than 26 percent. On average, about 146 programs per grant year would be affected. Among these programs, the average amount of matching money needed to reach the 26 percent level is about $20,250 per program, or about $2,950,000 per year across all AmeriCorps programs. However, the median program would require about $14,200 in additional matching money to reach the 26 percent level. All told, this analysis indicates that the programs that would be affected would require very little additional money to achieve a 26 percent match, and that the overall impact of the rule on Corporation programs falls well short of $100 million annually.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047 and 3045–0065 and these may be revised before this rule becomes effective.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs-social programs, Volunteers.

45 CFR Part 2520

Grant programs-social programs, Volunteers.

45 CFR Part 2521

Grant programs-social programs, Volunteers.

45 CFR Part 2522

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2540

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2550

Administrative practice and procedure, Grant programs-social programs.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 2510.20 by adding the definition ''target community'' in alphabetical order to read as follows:

§ 2510.20 Definitions

* * * * *

Target community. The term *target community* means the geographic community for which an AmeriCorps grant applicant identifies an unmet human need to be addressed.

* * * * *

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

1. The authority citation for part 2520 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

2. Add a new § 2520.5 to read as follows:

§ 2520.5 What definitions apply to this part?

You. For this part, *you* refers to the grantee or an organization operating an AmeriCorps program.

3. Revise § 2520.20 to read as follows:

§ 2520.20 What service activities may I support with my grant?

(a) Your grant must initiate, improve, or expand the ability of an organization and community to provide services to address local environmental, educational, public safety, homeland security, or other human needs.

(b) You may use your grant to support AmeriCorps members:

(1) Performing direct service activities that meet local needs.

(2) Performing capacity building activities that improve the organizational and financial capability of nonprofit organizations and communities to meet local needs by achieving greater organizational efficiency and effectiveness, greater impact and quality of impact, stronger likelihood of successful replicability, or expanded scale.

§ 2520.30 [Redesignated as § 2520.70]

3. Redesignate § 2520.30 as § 2520.70, and add the following sections: §§ 2520.25, 2520.30, 2520.35, 2520.40,

2520.45, 2520.50, 2520.55, 2520.60, and 2520.65.

§ 2520.25 What direct service activities may AmeriCorps members perform?

(a) The AmeriCorps members you support under your grant may perform direct service activities that will advance the goals of your program, that will result in a specific identifiable service or improvement that otherwise would not be provided, and that are included in, or consistent with, your Corporation-approved grant application.

(b) Your members' direct service activities must meet local environmental, educational, public safety, homeland security, or other human needs.

(c) Direct service activities generally refer to activities that provide a direct, measurable benefit to an individual, a group, or a community.

(d) Examples of the types of direct service activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Tutoring children in reading;

(2) Helping to run an after-school program;

(3) Removing garbage and debris from a park;

(4) Providing health information to a vulnerable population;

(5) Teaching as part of a professional corps;

(6) Providing relief services to a community affected by a disaster; and

(7) Conducting a neighborhood watch program as part of a homeland security or law enforcement effort.

§ 2520.30 What capacity-building activities may AmeriCorps members perform?

Capacity-building activities that AmeriCorps members perform should enhance the mission, strategy, skills, and culture, as well as systems, infrastructure, and human resources of an organization. Capacity-building activities help an organization gain greater independence and sustainability.

(a) The AmeriCorps members you support under your grant may perform capacity-building activities that advance your program's goals and that are included in, or consistent with, your Corporation-approved grant application.

(b) Examples of capacity-building activities your members may perform include, but are not limited to, the following:

(1) Strengthening volunteer management and recruitment, including:

(i) Enlisting, training, or coordinating volunteers;

(ii) Helping an organization develop an effective volunteer management system;

(iii) Organizing service days and other events in the community to increase citizen engagement;

(iv) Promoting retention of volunteers by planning recognition events or providing ongoing support and follow-up to ensure that volunteers have a high-quality experience;

(v) Assisting an organization in reaching out to individuals and communities of different backgrounds when encouraging volunteerism to ensure that a breadth of experiences and expertise is represented in service activities.

(2) Conducting outreach and securing resources in support of service activities that meet specific needs in the community;

(3) Helping build the infrastructure of the sponsoring organization, including:

(i) Conducting research, mapping community assets, or gathering other information that will strengthen the sponsoring organization's ability to meet community needs;

(ii) Developing new programs or services in a sponsoring organization seeking to expand;

(iii) Developing organizational systems to improve efficiency and effectiveness;

(iv) Automating organizational operations to improve efficiency and effectiveness;

(v) Initiating or expanding revenue-generating operations directly in support of service activities; and

(vi) Supporting staff and board development.

(4) Developing collaborative relationships with other organizations working to achieve similar goals in the community, such as:

(i) Faith-based and other community organizations;

(ii) Foundations;

(iii) Local government agencies; and

(iv) Institutions of higher education.

§ 2520.35 Must my program recruit or support volunteers?

(a) Unless we approve otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

(b) If you demonstrate that requiring your program to recruit or support volunteers would constitute a fundamental alteration to your program structure, the Corporation may waive the requirement in response to your written request for such a waiver in the grant application.

§ 2520.40 Under what circumstances may AmeriCorps members in my program raise funds?

(a) AmeriCorps members may raise funds directly in support of your program's service activities.

(b) Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;

(2) Writing a grant proposal to a foundation to secure resources to support the training of volunteers;

(3) Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individual;

(4) Securing financial resources from the community to assist a community-based organization in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of the community-based organization;

(5) Seeking donations from alumni of the program for specific service projects being performed by current members.

(c) AmeriCorps members may not:

(1) Raise funds for living allowances or for an organization's general (as opposed to program) operating expenses or endowment;

(2) Write a grant application for AmeriCorps funding or for any other Corporation or Federal funding.

§ 2520.45 How much time may an AmeriCorps member spend fundraising?

An AmeriCorps member may spend no more than ten percent of his or her term of service performing fundraising activities, as described in § 2520.40.

§ 2520.50 How much time may AmeriCorps members in my program spend in education and training activities?

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program may be spent in education and training activities.

(b) Capacity-building activities and direct service activities do not count towards the 20 percent cap on education and training activities.

§ 2520. 55 When may my organization collect fees for services provided by AmeriCorps members?

We encourage you, where appropriate, to collect fees for direct services provided by AmeriCorps members if:

(a) The service activities conducted by the members are allowable, as defined

in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and

(b) You use any fees collected to finance your non-Corporation share, or as otherwise authorized by the Corporation.

§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?

You must follow all applicable OMB circulars on allowable costs (OMB Circular A–87 for State, Local, and Indian Tribal Governments, OMB Circular A–122 for Nonprofit Organizations, and OMB Circular A–21 for Educational Institutions). In general, the OMB circulars do not allow the following as direct costs under the grant: costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

§ 2520.65 What other member activities are not permissible?

In addition to the activities prohibited under § 2520.70 of this subpart, you may not assign members to permanent duties that are solely clerical. However, you may have members perform administrative duties associated with the projects financed by the grant temporarily at your discretion as long as:

(a) Any one member does not spend more than 10 percent of his or her term of service on these duties; and

(b) Allowing a member to perform these duties does not keep you from meeting the performance goals in your approved grant application.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

1. The authority citation for part 2521 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

2. Add a new § 2521.5 to read as follows:

§ 2521.5 What definitions apply to this part?

You. For this part, *you* refers to the grantee, unless otherwise noted.

3. Establish a new § 2521.95 with the heading as set forth below.

§ 2521.95 To what extent may I use grant funds for administrative costs?

* * * * *

§ 2521.30 [Amended]

4. Transfer the text of paragraph (h) of § 2521.30 to new § 2521.95, and

a. Redesignate paragraphs (h)(1), (h)(2) and (h)(3) introductory text as (a), (b), and (c), respectively;

b. Redesignate (h)(3)(i), (h)(3)(i)(A), and (h)(3)(i)(B) as (c)(1), (c)(1)(i), (c)(1)(ii), respectively; and

c. Redesignate (h)(3)(ii) and (h)(3)(iii) as (c)(2), and (c)(3), respectively.

5. Amend § 2521.30 by removing paragraph (g).

6. Add the following sections: §§ 2521.40, 2521.50, 2521.60, 2521.65, 2521.70, 2521.80, and 2521.90.

§ 2521.40 What are the statutory limitations on the Federal government's share of program costs?

The statutory limitations on the Federal government's share are different—in kind and amount—for member support costs and program operating costs.

(a) *Member support:* The Federal share, including Corporation and other Federal funds, of member support costs, which includes the living allowance required under § 2522.240(b)(1), FICA, unemployment insurance (if required under State law), worker's compensation (if required under State law), and health care, is limited as follows:

(1) The Federal share may not exceed 85 percent of the minimum living allowance required under § 2522.240(b)(1), and 85 percent of other member support costs.

(2) If you are a professional corps described in § 2522.240(b)(2)(i), you may not use Corporation or any other Federal funds for the living allowance.

(3) Your share of member support costs must be non-Federal cash.

(b) *Program operating costs:* The Corporation share of program operating costs may not exceed 67 percent. These costs include costs other than member support costs, staff, operating costs, and internal evaluation and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds, or third party in-kind contributions.

(2) Contributions, including third party in-kind must:

(i) Be verifiable from your records;

(ii) Not be included as contributions for any other federally assisted program;

(iii) Be necessary and reasonable for the proper and efficient accomplishment of your program's objectives; and

(iv) Be allowable under applicable OMB cost principles.

(3) You may not include the value of direct community service performed by volunteers, but you may include the value of services contributed by volunteers to your organizations for organizational functions such as accounting, audit, and training of staff and AmeriCorps programs.

§ 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share of costs?

If you are an Indian Tribe that receives tribal funds through Public Law 93–638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and you may use them towards your share of costs, including member support costs.

§ 2521.60 To what extent must my share of program costs increase over time?

If your program continues to receive funding after an initial three-year grant period and continues to meet the minimum requirements in § 2541.40 of this part, your required share of program costs, including member support and operating costs, will increase to a 50 percent aggregate for the tenth year that you receive a grant, and any subsequent year without a break in funding of two years or more. In other words, by your tenth year as a grantee without a break in funding of two years or more, you will be required to match $1 for every $1 you receive from the Corporation.

(a) *Minimum Organization Share:* Subject to the requirements of § 2521.40 of this part, and except as provided in paragraph (d) of this section, the aggregate amount of your share of program costs will increase as of the fourth consecutive year that you receive a grant without a break in funding of two years or more, according to the following timetable:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Minimum member support	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
Minimum operating costs	33%	33%	33%	33%	33%	33%	33%	33%	33%	33%
Minimum aggregate share	NA	NA	NA	26%	30%	34%	38%	42%	46%	50%

(b) *Schedule for current program grants:* If you have completed one or more three-year grant cycles on the date this regulation takes effect, you will be required to provide your share of costs beginning at the year three level, according to the table in paragraph (a) of this section, in the first program year in your grant following the regulation's effective date, and increasing each year thereafter as reflected in the table.

(c) *Flexibility in how you provide your share:* As long as you meet the minimum match requirements in § 2521.40, you may use cash or in-kind contributions to reach the aggregate share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required aggregate match by raising only more member support match, and leave operational match at the minimum level, as long as you provide the required aggregate match.

(d) *Reporting excess resources.*

(1) The Corporation encourages you to obtain support over-and-above the matching fund requirements. Reporting these resources may make your application more likely to be selected for funding, based on the selection criteria in §§ 2522.430 and 2522.435 of these regulations.

(2) You must comply with § 2543.23 of this title in documenting cash and in-kind contributions and excess resources.

§ 2521.65 What flexibility does a state commission have for a grantee that is unable to meet the required matching levels?

If a State commission determines that a particular grantee is unable to meet its required matching levels because it operates in a resource-poor community, the State commission may deem grantee's matching requirements to have been satisfied if one or more grantees in the State commission's portfolio are over-matching and therefore able to make up the difference in the lower grantee's matching requirements.

§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.40 and 2521.60 of this part?

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.40 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

(b) If you are requesting a waiver, you must demonstrate:

(1) The lack of resources at the local level;

(2) The efforts you have made to raise matching funding; and

(3) How much of the matching funds you have raised or reasonably expect to raise.

(c) You must provide with your waiver:

(1) A request for the specific amount of matching funds you are requesting that the Corporation waive; and

(2) A budget and budget narrative that reflects the requested change in matching funds.

§ 2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?

If your program has not received an AmeriCorps grant for five years or more, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

§ 2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?

If your organization is a new or replacement legal applicant for an existing program, you must provide matching funds at the level that the previous legal applicant was at the time you took over the program.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595

2. Add a new § 2522.10 to subpart A to read as follows:

§ 2522.10 What definitions apply to this part?

You. For this part, *you* refers to the grantee, unless otherwise noted.

3. Amend § 2522.250 as follows:

a. In paragraph (a)(3) revise the text to read as follows; and

b. In paragraph (b)(3) revise the paragraph heading, and paragraph (b)(3)(i), to read as follows:

§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) * * *

(3) * * * The amount of the child-care allowance may not exceed the applicable payment rate established by the State for child care funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

* * * * *

(b) * * *

(3) *Federal share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Federal share of the cost of health coverage may not exceed 85 percent.

* * * * *

4. Revise § 2522.400 and § 2522.410 to read as follows:

§ 2522.400 What process does the Corporation use to select new grantees?

The Corporation uses a multi-stage process including peer reviewers, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

§ 2522.410 What is the role of the Corporation's Board of Directors in the selection process?

The Board of Directors has general authority to determine the selection process, including priorities and selection criteria, and has authority to make grant decisions. The Board may delegate these functions to the Chief Executive Officer.

§ 2522.480 [Redesignated from § 2522.420]

5. Redesignate § 2522.420 as § 2522.480 and add the following sections: §§ 2522.415, 2522.420, 2522.425, 2522.430, 2522.435, 2522.440, 2522.445, 2522.450, 2522.455, 2522.460, 2522.465, 2522.470, and 2522.475.

§ 2522.415 How does the grant selection process work?

The selection process includes:

(a) Determining whether your proposal complies with the application requirements, such as deadlines and eligibility requirements;

(b) Applying the basic selection criteria to assess the quality of your proposal;

(c) Applying any applicable priorities or preferences, as stated in these regulations and in the applicable Notice of Funding Availability; and

(d) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's national AmeriCorps portfolio.

§ 2522.420 What basic criteria does the Corporation use in making funding decisions?

In evaluating your application for funding, the Corporation will assess:

(a) Your program design;

(b) Your organizational capability; and

(c) Your program cost-effectiveness.

§ 2522. 425 What does the Corporation consider in assessing Program Design?

In determining the quality of your proposal's program design, the Corporation considers your rationale and approach for the proposed program, member outputs and outcomes, and community outputs and outcomes.

(a) *Rationale and approach.* In evaluating your rationale and approach, the Corporation considers the following criteria:

(1) Whether your proposal describes and adequately documents a compelling need within the target community, including a description of how you identified the need;

(2) Whether your proposal includes well-designed activities that address the compelling need, with ambitious performance measures, and a plan or system for continuous program self-assessment and improvement;

(3) Whether your proposal describes well-defined roles for participants that are aligned with the identified needs and that lead to measurable outputs and outcomes; and

(4) The extent to which your proposed program or project:

(i) Effectively involves the target community in planning and implementation;

(ii) Builds on (without duplicating), or reflects collaboration with, other national and community service programs supported by the Corporation; and

(iii) Is designed to be replicated.

(b) *Member outputs and outcomes.* In evaluating how your proposal addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Includes effective and feasible plans for, or evidence of, recruiting, managing, and rewarding diverse participants, including participants from the target community, and demonstrating member satisfaction;

(2) Includes effective and feasible plans for, or evidence of, development, training, and supervision of participants;

(3) Demonstrates well-designed training or service activities that promote and sustain post-service, an ethic of service and civic responsibility, including structured opportunities for participants to reflect on and learn from their service; and

(4) Has met well-defined, member-based performance measures, including outputs and outcomes, if applicable.

(c) *Community outputs and outcomes.* In evaluating whether your proposal adequately addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Is successful in meeting targeted, compelling community needs, or if you are a current grantee, the extent to which your program has met its well-defined, community-based performance measures, including outcomes, in previous grant cycles, and is continually expanding and increasing its reach and impact in the community;

(2) Has an impact in the community that is sustainable beyond the presence of Federal support (For example, if one of your projects is to revitalize a local park, you would meet this criterion by showing that after you have completed your revitalization project, the community will continue its upkeep on its own);

(3) Generates and supports volunteers to expand the reach of your program in the community; and

(4) Enhances capacity-building of other organizations and institutions important to the community, such as schools, homeland security organizations, neighborhood watch organizations, civic associations, and faith-based and other community organizations.

§ 2522.430 How does the Corporation assess my organizational capability?

(a) In evaluating your organizational capability, the Corporation considers the following:

(1) The extent to which your organization has a sound structure including:

(i) The ability to provide sound programmatic and fiscal oversight;

(ii) Well-defined roles for your board of directors, administrators, and staff;

(iii) A well-designed plan or systems for organizational (as opposed to program) self-assessment and continuous improvement; and

(iv) The ability to provide or secure effective technical assistance.

(2) Whether your organization has a sound record of accomplishment as an organization, including the extent to which you:

(i) Generate and support diverse volunteers who increase your organization's capacity; and

(ii) Demonstrate leadership within the organization and the community served.

(3) The extent to which you are securing community support that becomes stronger and more diverse, as evidenced by—

(i) Collaborations that increase the quality and reach of service and include well-defined roles for faith-based or other community organizations;

(ii) Local financial and in-kind contributions; and

(iii) Supporters who represent a wide range of community stakeholders.

(b) In applying the criteria in paragraph (a) of this section to each proposal, the Corporation may take into account the following circumstances of individual organizations:

(1) The age of your organization and its rate of growth; and

(2) Whether your organization serves a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate resources.

(c) When reviewing a proposal submitted by a state commission, the Corporation may consider the State commission's financial management and monitoring capabilities, and may turn down a program application if the Corporation determines that the State commission's capabilities are materially weak.

§ 2522.435 How does the Corporation evaluate the cost-effectiveness of my program?

(a) In evaluating the cost-effectiveness of your proposed program, the Corporation considers the following:

(1) Whether your budget is adequate to support your program design, and

(2) Cost-effectiveness indicators that include, at a minimum:

(i) Your program's proposed Corporation cost per FTE, as defined in § 2522.485;

(ii) The extent to which your program demonstrates diverse non-Federal resources for program implementation and sustainability;

(iii) The extent to which you are increasing your share of costs to meet or exceed program goals; and

(iv) The extent to which you are proposing deeper impact or broader reach without a commensurate increase in Federal costs.

(b) In applying the cost-effectiveness criteria in paragraph (a) of this section, the Corporation will take into account the following circumstances of individual programs:

(1) Program age, or the extent to which your program brings on new sites;

(2) Whether your program or project is located in a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate or philanthropic resources;

(3) Whether your program or project is located in a high-cost, economically disadvantaged community, measured by applying appropriate Federal and State data; and

(4) Whether the reasonable and necessary costs of your program or project are higher because they are associated with engaging or serving difficult-to-reach populations, or achieving greater program impact as evidenced through performance measures and program evaluation.

§ 2522.440 What weight does the Corporation give to each category of the basic criteria?

In evaluating applications, the Corporation assigns the following weights for each category:

Category	Percentage
Program Design	50
Organizational Capability	25
Cost-Effectiveness	25

§ 2522. 445 What weights does the Corporation give to the subcategories under Program Design?

The Corporation gives the following weights to the subcategories under Program Design:

Program design sub-category	Percentage
Rationale and Approach	10
Member Outputs and Outcomes	20
Community Outputs and Outcomes	20

§ 2522.450 What types of programs or program models may receive special consideration in the selection process?

Following the scoring of proposals under §§ 2522.440 of this part, the Corporation may give special consideration to the following categories of programs to ensure a balanced portfolio:

(a) *Program models*:

(1) Programs operated by faith-based and small community-based organizations, or programs that support the efforts of faith-based and small community-based organizations, to solve local problems;

(2) Lower-cost professional corps programs, as defined in paragraph (a)(3) of § 2522.110 of this chapter.

(b) *Program activities*:

(1) Programs that serve or involve children and youth, including mentoring of children of prisoners;

(2) Programs that address educational needs, including those that carry out literacy and tutoring activities generally, and those that focus on reading for children in the third grade or younger;

(3) Programs that focus on homeland security activities that support and promote public safety, public health, and preparedness for any emergency, natural or man-made (this includes programs that help to plan, equip, train, and practice the response capabilities of many different response units ready to mobilize without warning for any emergency);

(4) Programs that address issues relating to the environment;

(5) Programs that support independent living for seniors or individuals with disabilities; and

(6) Programs that involve community-development.

(c) *Programs supporting distressed communities*: Programs or projects that will be conducted in:

(1) A community designated as an empowerment zone or redevelopment area, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(2) An area that is environmentally distressed, as demonstrated by Federal and State data;

(3) An area adversely affected by Federal actions related to managing Federal lands that result in significant regional job losses and economic dislocation;

(4) An area adversely affected by reductions in defense spending or the closure or realignment of military installation; or

(5) An area that has an unemployment rate greater than the national average unemployment for the most recent 12 months for which State or Federal data are available.

(d) *Other programs*: Programs that meet any additional priorities as the Corporation determines and disseminates in advance of the selection process.

§ 2522.455 How do I find out about additional priorities governing the selection process?

The Corporation publishes a Notice of Funding Availability (NOFA) in advance of a grant competition, addressing the Corporation's priorities and additional requirements, including those directed by annual appropriations. We also post the NOFA on our Web site at *http://www.nationalservice.org* and at *http://www.grants.gov*.

§ 2522. 460 To what extent does the Corporation consider priorities other than those stated in these regulations or the Notice of Funding Availability?

The Corporation may give priority consideration to a national service program submitted by a State commission that does not meet one of the Corporation's priorities if the State commission adequately explains why the State is not able to carry out a program that meets one of the Corporation's priorities.

§ 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?

(a) If you are a State commission applying for State competitive funding, you must prioritize the proposals you submit in rank order according to the following table:

If you submit this number of State competitive proposals to the corporation:	Then you must rank this number of proposals:
1 to 12	At least top 5.
13 to 24	At least top 10.
25 or more	At least top 15.

(b) While the Corporation will not be bound by the rankings you submit, we may consider them in our selection process.

§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs and projects in areas with the highest rates of poverty.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following:

(1) Progress reports;

(2) Corporation site visit reports, including grantee responses;

(3) Member satisfaction indicators;

(4) Program evaluations;

(5) Member-related information from the Corporation's systems;

(6) Other evaluation material, including IG reports, and administrative standards for State commissions, reports on program training and technical assistance;

(7) Grantee communications with the Corporation;

(8) Financial Status Reports (FSR);

(9) Audits;

(10) Information for an applicant organization's Web site;

(11) IRS Tax Form 990;

(12) HHS Account Payment Data Report of the HHS Payment Management System;

(13) Federal Cash Transaction Report (SF–272);

(14) An applicant organization's annual report;

(15) An applicant organization's Financial Management Survey;

(16) Financial Management Training and Technical Assistance Report;

(17) Publicly available socio-economic and demographic data, such as poverty rate, unemployment rate, labor force participation, and median household income;

(18) Publicly available information on where an applicant and its activities fall

on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(19) Publicly available information on the nonprofit and philanthropic community, such as charitable giving per capita;

(20) U.S. Department of Education data on Federal Work Study and Community Service; and

(21) Other information, following notice in the relevant Notice of Funding Availability, of the specific information and the Corporation's intention to be able to consider that information in the review process.

§ 2522. 475 If I am a state commission or a national direct grantee, to what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?

While the Corporation does not require you to use the Corporation's selection criteria and priorities in selecting your state formula grant programs or operating site, we encourage you to do so.

6. Add new § 2522.485 to read as follows:

§ 2522.485 If I am an AmeriCorps national and community service program, how do I calculate my budgeted Corporation cost per full-time-equivalent (FTE)?

If you are an AmeriCorps national and community service program, you calculate your Corporation cost per FTE by dividing your budgeted grant costs by the number of member full time equivalents you are awarded in your grant. You do not include child-care or the cost of the education award a member may earn through serving with your program.

§§ 2522.800, 2522.810, 2522.820 [Redesignated from §§ 2522.540, 2252.550, 2522.560]

7. Amend subpart E of part 2522 as follows:

a. By redesignating § 2522.540, § 2522.550, and § 2522.560 as § 2522.800, § 2522.810, and § 2522.820 respectively;

b. By revising §§ 2522.500, 2522.510, 2522.520, and 2522.530;

c. By adding §§ 2522.540, 2522.550, 2522.560, 2522.570, 2522.580, 2522.590, 2522.600, 2522.610, 2522.620, 2522.630, 2522.640, 2522.650, 2522.650, 2522.700, 2522.710, 2522.720, 2522.730, and 2522.740; and

d. By adding undesignated center headings preceding §§ 2522.650 and 2522.700.

The added and revised text reads as follows:

§ 2522.500 What is the purpose of this subpart?

(a) This subpart sets forth the minimum performance measures and evaluation requirements that you as a Corporation applicant or grantee must follow.

(b) The performance measures that you, as an applicant, propose when you apply will be considered in the review process and may affect whether the Corporation selects you to receive a grant. Your performance related to your approved measures will influence whether you continue to receive funding.

(c) Performance measures and evaluations are designed to strengthen your AmeriCorps program and foster continuous improvement, and help us identify best practices and models that merit replication, as well as programmatic weaknesses that need attention.

§ 2522.510 To whom does this subpart apply?

This subpart applies to you if you are a Corporation grantee administering an AmeriCorps grant, or if you are applying to receive funding from the Corporation.

§ 2522.520 What special terms are used in this subpart?

The following definitions apply to terms used in this subpart of the regulations:

(a) *Approved application* means the application approved by the Corporation or, for formula programs, by a State commission.

(b) *Community beneficiaries* refers to persons who receive services or benefits from a program, but not to AmeriCorps members or to staff of the organization operating the program.

(c) *Output indicators* are the amount or units of service that members or volunteers have completed, or the number of community beneficiaries the program has served. Output indicators do not provide information on benefits or other changes in the lives of members or community beneficiaries. Examples of output indicators might include the number of people a program tutors, counsels, houses, or feeds.

(d) *Intermediate-outcome indicators* specify a change that has occurred in the lives of community beneficiaries or members, but is not necessarily a lasting benefit for them. They are observable and measurable indications of whether or not a program is making progress. An example would be the number and percentage of students who report reading more books as a result of their participation in a tutoring program.

(e) *End-outcome indicators* specify a change that has occurred in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome might be the percent and number of students who have improved their reading scores to grade-level, or other specific measures of academic achievement.

(f) *Grantee* includes *subgrantees* and *projects*.

(g) *You* refers to the reader, either as a grantee or applicant organization.

§ 2522.530 What basic requirements must I follow in measuring performance under my grant?

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measures and evaluation requirements, and ensure that you take appropriate steps to correct any problems that develop. You must:

(a) Establish ambitious performance measures in consultation with the Corporation, or the State commission, as appropriate, following §§ 2422.560 through 2422.660 of this subpart;

(b) Ensure that any program under your oversight collects and organizes performance data on an ongoing basis, at least annually;

(c) Ensure that any program under your oversight tracks progress toward meeting your performance measures;

(d) Ensure that any program under your oversight corrects performance deficiencies promptly; and

(e) Accurately and fairly present the results in reports to the Corporation.

§ 2522.540 May I use the Corporation's program grant funds for performance measurement and evaluation?

If performance measurement and evaluation costs were approved as part of your grant, you may use your program grant funds to support them, consistent with the level of approved costs for such activities in your grant award.

§ 2522.550 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?

No, the costs of performance measurement and evaluation do not count towards the statutory five percent cap on administrative costs in the grant, as provided in § 2540.110 of this chapter.

Performance Measures: Requirements and Procedures

§ 2522.560 What information on performance measures must my grant application include?

You must submit all of the following as part of your application for each program:

(a) Proposed performance measures, as described in § 2522.570 through § 2522.590 of this part.

(b) Estimated performance data for the program years for which you submit your application; and

(c) Actual performance data, where available, for the preceding completed program year.

§ 2522.570 What are performance measures and performance measurement?

(a) Performance measures are measurable indicators of a program's performance as it relates to member service activities.

(b) Performance measurement is the process of regularly measuring the services provided by your program and the effect your program has on the intended beneficiaries' lives.

(c) The main purpose of performance measurement is to strengthen your AmeriCorps program and foster continuous improvement and to identify best practices and models that merit replication. Performance measurement will also help identify programmatic weaknesses that need attention.

§ 2522.580 What performance measures am I required to submit to the Corporation?

(a) When applying for funds, you must submit at least one of each of the following types of performance measures:

(1) Output measures;

(2) Intermediate-outcomes; and

(3) End-outcome measures.

(b) Your measures need not cover the scope of your entire program, but they should give a clear indication of your program's primary purpose and objectives.

(c) You must include at least one end-outcome measure that captures the results of your program's primary activity.

(d) The measures you choose must be aligned with one another. For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students tutored;

(2) Intermediate Outcome: Percent of students reading more books; and

(3) End Outcome: Percent of students reading at or above grade level.

(e) The Corporation may include additional requirements for performance measures on a periodic basis through program guidance and related materials. This information will be available at the Corporation's Web site at *http://www.nationalservice.org*.

(f) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past.

§ 2522.590 Who develops my performance measures?

(a) You are responsible for developing your program-specific performance measures through your own internal process.

(b) In addition, the Corporation may, in consultation with grantees, establish performance measures that will apply to all Corporation-sponsored programs, which you will be responsible for collecting and meeting.

§ 2522.600 Who approves my performance measures?

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all programs submitting applications for funding directly to the Corporation. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of the negotiation process before we award the grant.

(b) If you are a program submitting an application under the State formula category, the applicable State commission is responsible for reviewing and approving your performance measures. The Corporation will not separately approve these measures.

§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?

(a) Except as provided in paragraph (b) of this section, State commissions are responsible for making the final determination of performance measures for State formula programs, while the Corporation makes the final determination for all other programs.

(b) The Corporation may, through the State commission, require that formula programs meet certain performance measures above and beyond what the State commission has negotiated with its formula grantees.

(c) While State commissions must hold their sub-grantees responsible for their performance measures, a State commission, as a grantee, is responsible to the Corporation for its formula programs' performance measures.

§ 2522.620 How do I report my performance measures to the Corporation?

The Corporation sets specific reporting requirements, including frequency and deadlines, for performance measures in the grant award.

(a) In general, you are required to report on the actual results that occurred when implementing the grant and to regularly measure your program's performance.

(b) Your report must include the results on the performance measures approved as part of your grant award.

(c) At a minimum, you are required to report on outputs at the end of year one; outputs and intermediate-outcomes at the end of year two; and outputs, intermediate-outcomes and end-outcomes at the end of year three. We encourage you to exceed these minimum requirements and report results earlier.

§ 2522.630 What must I do if I am not able to meet my performance measures?

If you realize that you are not on track to meet your performance measures, you must develop a plan to get back on track, or submit a request to the Corporation to amend your requirements.

The request must include all of the following:

(a) Why you are not on track to meet your performance requirements;

(b) How you have been tracking performance measures;

(c) Evidence of the corrective steps you have taken;

(d) Any new proposed performance measures or targets; and

(e) Your plan to ensure that you meet any new measures.

§ 2522.640 Under what circumstances may I change my performance measures?

(a) You may change your performance measures only if the Corporation or, for formula programs, the State commission, approves your request to do so based on your need to:

(1) Adjust your performance measure or target based on experience so that your program's goals are more realistic and manageable;

(2) Replace a measure related to one issue area with one related to a different issue area that is more aligned with your program service activity. For example, you may need to replace an objective related to health with one related to the environment;

(3) Redefine the service that individuals perform under the grant. For example, you may need to define your service as tutoring adults in English, as opposed to operating an after-school program for third-graders;

(4) Eliminate an activity because you have been unable to secure necessary matching funding; or

(5) Replace one measure with another. For example, you may decide that you wish to replace one measure of literacy tutoring (increased attendance at school) with another (percentage of students who are promoted to the next grade level).

§ 2522.650 What happens if I fail to meet the performance measures included in my grant?

(a) If you are significantly under-performing based on the performance measures approved in your grant, or fail to collect appropriate data to allow performance measurement, the Corporation may specify a period of correction, after consulting with you. As a grantee, you must report results at the end of the period of correction. At that point, if you continue to under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

(1) Reduce the amount of your grant;

(2) Suspend or terminate your grant;

(3) Use this information to assess any application from your organization for a new AmeriCorps grant or a new grant under another program administered by the Corporation;

(4) Amend the terms of any Corporation grants to your organization; or

(5) Take other actions that the Corporation deems appropriate.

(b) If you are a State commission whose formula program(s) is significantly under-performing or failing to collect appropriate data to allow performance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

Evaluating Programs: Requirements and Procedures

§ 2522.700 How does evaluation differ from performance measurement?

(a) Evaluation is a more in-depth, rigorous effort to measure the impact of programs. While performance measurement and evaluation both include systematic data collection and measurement of progress, evaluation uses scientifically-based research methods (*i.e.*, random assignment) to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. Unlike performance measures, evaluations estimate the impacts of programs by comparing the outcomes for individuals receiving a service or participating in a program to the outcomes for similar individuals not receiving a service or not participating in a program. For example, an evaluation of a literacy program may compare the reading ability of students in a program over time to a similar group of students not participating in a program.

(b) Performance measurement describes the effects of the program on the population being served through the systematic collection of data on a continual basis. Performance measures may include counts of activities and people served, and changes in the level of knowledge or behavior of people being served. For example, a performance measure for a literacy program may include the percentage of students who increase their reading ability from ''below grade level'' to ''at or above grade level''. In contrast to an evaluation, performance measurement does not generally compare the impact of the program on community beneficiaries or participants with those who are not part of AmeriCorps.

§ 2522.710 What are my evaluation requirements?

(a) If you are a State commission, you must establish and enforce evaluation requirements for your State formula subgrantees, as you deem appropriate.

(b) If you are a State competitive or direct Corporation grantee, and your average annual program grant is $500,000 or more, you must arrange for an independent evaluation of your program covering a period of at least 5 years, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation grantee whose average annual program grant is less than $500,000, or an Education Award Program grantee, the Corporation does not require that you conduct an evaluation of your program. However, the Corporation encourages you to conduct or arrange for an evaluation and may consider any such evaluation in assessing the quality of your program in any future grant competitions.

(d) The Corporation may, in its discretion, supercede these requirements with an alternative evaluation approach, including one conducted by the Corporation at the national level.

§ 2522.720 How often must I conduct an evaluation?

(a) If you are a State formula grantee, you must conduct an evaluation, as your State commission requires.

(b) If you are a State competitive or direct Corporation grantee, and are required to arrange for an independent evaluation under § 2522.710(c) of this subpart, you must arrange for such an evaluation at least every 5 years.

§ 2522.730 If I am required to arrange for an independent evaluation, how and when do I submit my evaluation to the Corporation?

(a) If you compete for AmeriCorps funds after an initial three-year grant cycle, you must submit a summary of your evaluation efforts to date, and a copy of any evaluation that has been completed, as part of your application for funding.

(b) If you again compete for AmeriCorps funding after a second three-year grant cycle, you must submit the completed evaluation with your application for funding.

§ 2522.740 How will the Corporation use my evaluation?

(a) If you are required to arrange for an independent evaluation under § 2522.710(c) of this subpart, the Corporation will consider the evaluation you submit with your application as follows:

(1) If you do not include with your application for AmeriCorps funding a summary of the evaluation, or the evaluation itself, as applicable, under § 2522.730, the Corporation will not consider your application.

(2) If you do submit an evaluation with your application, the Corporation will consider the results of your evaluation in assessing the quality and outcomes of your program.

(b) If you are not required to arrange for an independent evaluation under § 2522.710(c) but have nonetheless completed one, the Corporation may consider the results of your evaluation in assessing the quality of your program. Your inclusion of an evaluation with your application may make your application more likely to be selected.

8. Add subpart F to part 2522 consisting of § 2522.900 through § 2522.950, to read as follows:

Subpart F—Program Management Requirements for Grantees

Sec.
2522.900 What definitions apply to this subpart?
2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?
2522.920 Are there any exceptions to the qualifications requirements?
2522.930 What is an appropriate proficiency test?
2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?

Subpart F—Program Management Requirements for Grantees

§ 2522.900 What definitions apply to this subpart?

Tutor is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group reading or other small-group sessions that build on students' academic strengths and target students' academic needs. A tutor does not include someone engaged in supplemental academic support activities whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

If the tutor is:	Then the tutor must meet the following qualifications:
(a) Hired by Local Education Agency or school (b) Not hired by Local Education Agency or school.	Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58. (1)(i) High School diploma or its equivalent, or a higher degree OR (ii) Proficiency test, as described in § 2522.930 of this subpart; and (2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart.

§ 2522.920 Are there any exceptions to the qualifications requirements?

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a student tutoring younger children in the school as part of a structured, school-managed cross-grade tutoring program.

§ 2522.930 What is an appropriate proficiency test?

(a) If a member serving as a tutor does not have a high-school diploma or its equivalent, or a higher degree, the member must pass a proficiency test that the program has determined effective in ensuring that members serving as tutors have the necessary skills to achieve program goals.

(b) The program must maintain in the member file of each member who takes the test documentation on the proficiency test selected and the results.

§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

A program in which members engage in tutoring for children must:

(a) Articulate appropriate criteria for selecting and qualifying tutors;

(b) Identify the strategies or tools it will use to assess student progress and measure student outcomes;

(c) Certify that the curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local educational agency or with state academic content standards;

(d) Include appropriate member supervision by individuals with expertise in tutoring; and

(e) Provide specialized high-quality and research-based, member pre-service and in-service training consistent with the activities the member will perform.

§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?

(a) If your program does not involve tutoring as defined in § 2522.900 of this subpart, the Corporation will not impose the requirements in § 2522.910 through § 2522.940 of this subpart on your program.

(b) At a minimum, you must articulate in your application how you will recruit, train, and supervise members to ensure that they have the qualifications and skills necessary to provide the service activities in which they will be engaged.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

1. The authority citation for part 2540 is revised to read as follows:

Authority: E.O. 13331, 69 FR 9911; 42 U.S.C. 12571, 12631–12637, 12651d.

2. Amend § 2540.100 by redesignating paragraphs (f)(2) through (f)(5) as f(3) through (f)(6) respectively, and adding a new paragraph (f)(2) to read as follows:

§ 2540.100 What restrictions govern the use of Corporation assistance?

* * * * *

(f) * * *

(2) An organization may not displace a volunteer, including partial displacement such as reducing a volunteer's hours, by using a participant in a program receiving Corporation assistance.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

1. Revise the heading of part 2550 to read as set forth above.

2. The authority citation for part 2550 is revised to read as follows:

Authority: 42 U.S.C. 12638.

3. Amend § 2550.10 as follows:

a. By revising paragraph (b);

b. By revising paragraph (c);

c. By revising the last sentence of paragraph (d).

The revisions read as follows:

§ 2550.10 What is the purpose of this part?

* * * * *

(b) To be eligible to apply for program funding, or approved national service positions, each State must establish a State commission on national and community service to administer the State program grant making process and to develop a State plan. The Corporation may, in some instances, approve an alternative administrative entity (AAE).

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State commissions or AAEs.

(d) * * * This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information for State commissions and AAEs.

§ 2550.20 [Amended]

4. Amend § 2550.20 by removing paragraph (o).

5. Amend § 2550.30 by revising the section heading to read as set forth

below, removing paragraphs (c) and (d), and redesignating paragraph (e) as paragraph (c).

§ 2550.30 How does a State decide whether to establish a state commission or an alternative administrative entity?

* * * * *

§ 2550.40 [Amended]

6. Amend § 2550.40 by removing paragraph (c).

§ 2550.70 [Removed and reserved]

7. Remove and reserve § 2550.70.

8. Amend § 2550.80 as follows:

a. Revise the first two sentences of the introductory text;

b. Redesignate paragraph (a)(3) as paragraph (a)(4);

c. Add new paragraph (a)(3); and

d. Revise paragraph (j) to read as follows:

§ 2550.80 What are the duties of the State entities?

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively referred to as State entities. * * *

(a) * * *

(3) The plan must include a summary of the State commission's program sustainability approach.

* * * * *

(j) *Activity ineligible for assistance.* A State commission or AAE may not directly carry out any national service program that receives financial assistance under section 121 of the NCSA.

* * * * *

Dated: August 10, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–18594 Filed 8–12–04; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 04–259; RM–10603; FCC 04–174]

National Exchange Carrier Association Petition

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this document, the Federal Communications Commission (Commission) initiates a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

DATES: Comments due on or before October 12, 2004, and reply comments due on or before November 12, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554. Parties should also send a copy of their paper filings to Jeremy D. Marcus, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A230, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeremy D. Marcus, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0059.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 04–259, RM–10603, FCC 04–174, adopted on July 14, 2004, and released on July 19, 2004. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The full text of the NPRM may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or e-mail *fcc@bcpiweb.com*, or via its Web site at *http://www.bcpiweb.com*.

Initial Paperwork Reduction Act of 1995 Analysis

1. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

Introduction

2. This NPRM, adopted July 14, 2004, and released July 19, 2004, in WC Docket No. 04–259, RM–10603, FCC 04–174, initiates a proceeding to examine the proper number of SLCs that rate-of-return and price cap carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain PRI ISDN service.

3. The Commission's rules specify that carriers must assess one SLC ''per line,'' which is defined to mean per channel. For derived channel T–1 services, therefore, one SLC currently is assessed for each derived channel (*i.e.*, up to 24 channels per T–1) provided to the customer.

4. In 1997 in the *Access Charge Reform First Report and Order*, 62 FR 31868, June 11, 1997, the Commission modified the SLC rules for loops used to provide Basic Rate Interface (BRI) ISDN and PRI ISDN services for price cap carriers. Specifically, the Commission created exceptions to the general rule that one SLC be assessed for each channel of service provided, finding that a single SLC may be assessed for a loop used to provide BRI ISDN service, and that up to five SLCs may be assessed for a loop used to provide PRI ISDN service. In 2001, in the *MAG Order*, 66 FR 57919, November 30, 2001, the Commission adopted identical rule changes for rate-of-return carriers.

Background

5. On September 26, 2002, the National Exchange Carrier Association, Inc. (NECA) filed a petition for rulemaking requesting that the Commission initiate a rulemaking proceeding to modify the rules governing the assessment of the SLC for derived channel T–1 services where the customer provides the terminating channelization equipment. Specifically, NECA proposed modifying section 69.104(p) of the Commission's rules, 47 CFR 69.104(p), to permit rate-of-return carrier to assess no more than five SLCs on customers of derived channel T–1 services. Verizon has requested that any rule change be applied as well to price cap carriers for new T–1 service offerings.

6. NECA and other local exchange carriers and carrier associations claim that the proposed rule changes are necessary to bring SLC assessments