

Corporation for
**NATIONAL &
COMMUNITY
SERVICE** 

MEMORANDUM FOR GERALD WALPIN

FROM: Frank R. Trinity
General Counsel

Frank R. Trinity

SUBJECT: Your memorandum dated April 15, 2008

DATE: April 23, 2008

Your memorandum of April 15, 2008, to the Chief Executive Officer raised several concerns about how to handle improper end of term service hour certifications for AmeriCorps members. I have provided a memorandum to the Chief Executive Officer explaining our position in the areas you identified as in dispute. I am providing a copy of that memorandum to you.

I am writing separately concerning the following concluding paragraphs in your April 15 memorandum:

In conclusion, the issue comes down to whether the funds recovered are labeled a "refund" or a "miscellaneous receipt." This labeling decision is outcome-determinative in that refunds go back to the Trust while miscellaneous receipts go to the Treasury.

We believe that "refund" is the appropriate label, for the reasons discussed above. But to the extent the answer is not clear, the Corporation should consider its interests, the equities, and likely downside consequences or risks. The Corporation's interests are served when the funds recovered are called "refunds" and go back into the Trust. The equities favor the Corporation doing precisely that: The Corporation will be making the Trust whole with funds recovered from a certifying program or member, not entitled to keep them. The downside risk is that someone will disagree – but who? And why? Someone would have to pick that fight, and the Corporation's position defending the Trust is eminently defensible, particularly as it would be relying on OIG's advice. The Corporation should do so.

I have several concerns about your concluding paragraphs, but first let me acknowledge your directness, transparency, and candor in our discussion on this and other matters since you began your tenure as Inspector General. You have personally invested many



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hours in discussions with me and many other management officials in determining the best way to resolve the issue of improper service hour certifications. Please take my response in the same spirit of direct and candid dialogue. I feel compelled to put this response in writing for the purposes of the record, as you made the above-referenced recommendation in writing to the agency head.

In my view, the quoted language is reasonably interpreted as (1) advising the agency head to disregard the legal advice of the agency general counsel; (2) providing assurances that no one is likely to disagree if the agency head disregards the legal advice of agency general counsel; and (3) providing assurances that reliance on your contrary advice will serve as a defense in the event of a future controversy. If I have misunderstood your words, please let me know so we can properly understand your position.

First, as explained in more detail in my memorandum of this date to the Chief Executive Officer, it is my view that your legal position on the disposition of recovered funds in excess of an actual loss to the Government is not supported under the Constitutional and statutory framework governing public expenditures. Second, I think in expressing doubt about the likelihood of anyone disagreeing with your position, you overlook the importance placed upon the Miscellaneous Receipts Act by Congress, the Government Accountability Office, and the U.S. Department of Justice. Third, suggesting that an agency head specifically rely on OIG legal advice – contrary to the agency general counsel's advice – is a problematic precedent, and I would like to discuss this issue with you as part of our ongoing dialogue.