

February 3, 1998
L-98-5

TO : B. V. Ferguson
Director of Programs

FROM : Catherine C. Cook
General Counsel

SUBJECT : The Use of Earnings From VISTA Program
In Connection with Disability Earnings Restriction

The St. Louis, Missouri district office has raised the question as to whether earnings received under the VISTA program will affect the annuity of a person who is in receipt of a disability annuity under the Railroad Retirement Act. Section 2(e)(4) of the Act (45 U.S.C. § 231a(e)(4)) provides that no disability annuity may be paid in any month in which an annuitant earns over \$400.00. That section also requires an annuitant to report the amount of those earnings. The annuitant who is the subject of the district office's inquiry is a volunteer under the VISTA program who will be paid more than \$600.00 per month for his VISTA service.

Section 404(f)(1) of the Domestic Volunteer Service Act of 1973, as amended, (42 U.S.C. 5044(f)(1)) provides as follows:

Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the law of the State where such volunteers are serving, whichever is greater.

In accord with this provision, the Social Security Administration has determined that VISTA payments may not be used to determine substantial gainful activity under the disability provisions of the Social Security Act. See Social Security Ruling 84-24. Based on the above statutory provision, it is my opinion that VISTA payments are not to be included in the term earnings under section 2(e)(4) of the Act unless the Director of VISTA has made a determination that the level of earnings equals or exceeds the minimum wage. Barring such a determination, VISTA payments will have no effect on a disability annuity.