

45 CFR Chapter XII (Unofficial Version)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

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**PART 1201—PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR IN CONNECTION WITH FEDERAL OR STATE LITIGATION**

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

*[63 FR 4598, Jan. 30, 1998, unless otherwise noted]*

**§ 1201.1 Definitions.**

(a) *Corporation Employee* means the Chief Executive Officer of the Corporation and all employees, former employees, National Civilian Community Corps Members (hereinafter sometimes known as “Corps Members”), and VISTA Volunteers (hereinafter sometimes also known as “AmeriCorps\*VISTA Members”), who are or were subject to the supervision, jurisdiction, or control of the Chief Executive Officer, except as the Corporation may otherwise determine in a particular case.

(b) *Litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature.

(c) *Official Information* means all information of any kind, however stored, that is in the custody and control of the Corporation, relates to information in the custody and control of the Corporation, or was acquired by individuals connected with the Corporation as part of their official status within the Corporation while such individuals are employed by, or serve on behalf of, the Corporation.

**§ 1201.2 Scope.**

**(a) This part states the procedures followed with respect to:**

(1) Service of summonses and complaints or other requests or demands directed to the Corporation or to any Corporation employee in connection with Federal or State litigation arising out of, or involving the performance of, official activities of the Corporation; and

(2) Oral or written disclosure, in response to subpoenas, orders, or other requests or demands from Federal or by State judicial or quasi-judicial authority, whether civil or criminal, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters of:

(i) Any material contained in the files of the Corporation; or

(ii) Any information acquired:

(A) When the subject of the request is currently a Corporation employee or was a Corporation employee; or

(B) As part of the performance of the person's duties or by virtue of the person's position.

(b) Sections 1201.3 through 1201.10 do not apply to:

(1) Testimony or records provided in accordance with the Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(3) Disclosures to the Office of Inspector General or requests by the Office of Inspector General for official information or records.

(c) The procedures in this part apply to Corporation employees and official information within the Corporation Office of Inspector General. However, any determinations or other actions to be made by the General Counsel under this part, relating to employees or official information within the Office of Inspector General, shall be made by the Inspector General.

*[63 FR 4598, Jan. 30, 1998, as amended at 63 FR 64199, Nov. 19, 1998]*

### **§ 1201.3 Service of summonses and complaints.**

(a) Only the Corporation's General Counsel or his/her designee (hereinafter "General Counsel"), is authorized to receive and accept summonses or complaints sought to be served upon the Corporation or its employees. All such documents should be delivered or addressed to General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 10600, Washington, DC 20525.

(b) In the event any summons or complaint is delivered to a Corporation Employee other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication that refers the person attempting to effect service to the procedures set forth in this part.

(c) Except as otherwise provided in §1201.4(c), the Corporation is not an authorized agent for service of process with respect to civil litigation against Corporation Employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Corporation Employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the General Counsel.

### **§ 1201.4 Service of subpoenas, court orders, and other demands or requests for official information or action.**

(a) Except in cases in which the Corporation is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas, or other demands or requests directed to any component of the Corporation or Corporation Employees, whether civil or criminal in nature, for:

- (1) Material, including documents, contained in the files of the Corporation;
- (2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Corporation or which any Corporation employee acquired in the course and scope of the performance of official duties;
- (3) Garnishment or attachment of compensation of Corporation Employees; or
- (4) The performance or non-performance of any official Corporation duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Corporation Employee other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such Corporation Employee shall, after consultation with the General Counsel, decline to accept the subpoena, and demand or request the return of it under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, the Corporation is not an agent for service or otherwise authorized to accept on behalf of Corporation Employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual Corporation Employee to whom such demand or request is directed.

(d) Acceptance of such documents by the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure at 28 U.S.C. Appendix, Rules 4–6 or 18 USC Appendix or other applicable rules.

**§ 1201.5 Testimony and production of documents prohibited unless approved by appropriate Corporation officials.**

(a) Unless authorized to do so by the General Counsel, no Corporation Employee shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired:

- (1) While such person was a Corporation Employee;
- (2) As part of the performance of that person's official duties; or
- (3) By virtue of that person's official status.

(b) No Corporation Employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that individual's duties or by virtue of that individual's official status, unless authorized to do so by the General Counsel.

**§ 1201.6 Procedure when testimony or production of documents is sought.**

(a) If Official Information is sought, either through testimony or otherwise, the party seeking such information must (except as otherwise required by federal law or authorized by the General Counsel) set forth in writing with as much specificity as possible, the nature and relevance of the Official Information sought. The party must identify the record or reasonably describe it in terms of date, format, subject matter, the offices originating or receiving the record, and the names of all persons to whom the record is known to relate. Corporation Employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by the General Counsel. The General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, the Corporation may also require from the party seeking such testimony or documents a schedule of all reasonably foreseeable demands, including but not limited to the names of all current and former Corporation Employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) The General Counsel will notify the Corporation Employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The General Counsel will consult with the Department of Justice regarding legal representation for Corporation Employees in appropriate cases.

**§ 1201.7 Procedure when response to demand is required prior to receiving instructions.**

(a) If a response to a demand or request for Official Information pursuant to litigation is required before the General Counsel renders a decision, the Corporation will request that either a Department of Justice attorney or a Corporation attorney designated for the purpose:

(1) Appear, if feasible, with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand or request has been or is being, as the case may be, referred for the prompt consideration of the General Counsel; and

(4) Respectfully request the court or authority to stay the demand or request pending receipt of the requested instructions.

(b) In the event that an immediate demand or request for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or Corporation attorney on behalf of the Corporation employee, the Corporation Employee shall respectfully request the court or other authority for a reasonable stay of proceedings for the purpose of obtaining instructions from the Corporation.

**§ 1201.8 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand or request in response to a request made pursuant to §1201.7, or if the court or other authority rules that the demand or request must be complied with irrespective of the Corporation's instructions not to produce the material or disclose the information sought, the Corporation Employee upon whom the demand or request has been made shall, if so directed by the General Counsel, respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this part.

**§ 1201.9 Considerations in determining whether the Corporation will comply with a demand or request.**

(a) In deciding whether to comply with a demand or request, Corporation officials and attorneys are encouraged to consider:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of Corporation Employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Corporation of its mission and duties; and

(8) The need to avoid involving the Corporation in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance may not ordinarily be authorized are those when compliance would:

(1) Violate a statute, a rule of procedure, a specific regulation, or an executive order;

(2) Reveal information properly classified in the interest of national security;

(3) Reveal confidential commercial or financial information or trade secrets without the owner's consent;

(4) Reveal the internal deliberative processes of the Executive Branch; or

(5) Potentially impede or prejudice an ongoing law enforcement investigation.

**§ 1201.10 Prohibition on providing expert or opinion testimony.**

(a) Except as provided in this section, Corporation Employees shall not provide opinion or expert testimony based upon information that they acquired in the scope and performance of their official Corporation duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel, in the exercise of discretion, may grant special, written authorization for Corporation Employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a Corporation Employee such individual shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal

review of or challenge to the court's order will be made, the Corporation Employee shall comply with the order. If so directed by the General Counsel, however, the individual shall respectfully decline to testify.

**§ 1201.11 Authority.**

The Corporation receives authority to change its governing regulations from the National and Community Service Act of 1990 as amended (42 U.S.C. 12501 *et seq.*).

**PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

**Sec.**

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**Appendix A to Part 1203—Federal Financial Assistance to Which This Part Applies**

**Appendix B to Part 1203—Federal Financial Assistance to Which This Part Applies When a Primary Objective of the Federal Financial Assistance Is To Provide Employment**

*Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1.*

*[39 FR 27322, July 26, 1974, unless otherwise noted]*

**§ 1203.1 Purpose.**

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as title VI), to the end that a person in the United States shall not, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under a program or activity receiving Federal financial assistance from ACTION.

**§ 1203.2 Application of this part.**

(a) This part applies to each program for which Federal financial assistance is authorized under a law administered by ACTION, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

- (1) Federal financial assistance by way of insurance or guaranty contracts;
- (2) Money paid, property transferred, or other assistance extended before the effective date of this part, except when the assistance was subject to the title VI regulations of an agency whose responsibilities are now exercised by ACTION;

- (3) Assistance to any individual who is the ultimate beneficiary; or
- (4) Employment practices, under a program, of an employer, employment agency, or labor organization, except to the extent described in §1203.4(c).

The fact that a type of Federal financial assistance is not listed in Appendix A to this part does not mean, if title VI is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

- (b) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under that property are included, the nondiscrimination requirement of this part extends to a facility located wholly or in part in that space.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

### **§ 1203.3 Definitions.**

Unless the context requires otherwise, in this part:

- (a) *Applicant* means a person who submits an application, request, or plan required to be approved by ACTION, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and “application” means that application, request, or plan.

- (b) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

- (c) *Federal financial assistance* includes:

- (1) Grants and loans of Federal funds;
  - (2) The grant or donation of Federal property and interests in property;
  - (3) The detail of Federal personnel;
  - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in the property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale or lease to the recipient; and
  - (5) A Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
- (d) *Primary recipient* means a recipient that is authorized or required to extend Federal financial assistance to another recipient.

- (e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

- (1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

(f) *Recipient* may mean any State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual in any State, the District of Columbia, the Commonwealth of Puerto Rico, or territory or possession of the United States, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary.

(g) *Director* means the Director of ACTION or any person to whom he has delegated his authority in the matter concerned.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.4 Discrimination prohibited.**

(a) *General.* A person in the United States shall not, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, a program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin—

(i) Deny a person a service, financial aid, or other benefit provided under the program;

(ii) Provide a service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of a service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of an advantage or privilege enjoyed by others receiving a service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies an admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided a service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under a program or the class of persons to whom, or the situations in which, the services, financial aid, other benefits, or facilities will be provided under a program, or the class of persons to be afforded an opportunity to participate in a program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(4)(i) In administering a program regarding which the recipient had previously discriminated against persons on the ground of race, color, or national origin, the recipient shall take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of prior discrimination a recipient in administering a program may take affirmative action to overcome the effect of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) When a primary objective of the Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color, or national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by ACTION which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part applies, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI of this part.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.5 Assurances required.**

(a) *General.* (1) An application for Federal financial assistance to which this part applies, except an application to which paragraph (d) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of Federal financial assistance pursuant to the application, contain or be accompanied by, assurances that the program will be conducted or the facility operated in compliance with the requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of these assurances. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurances shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In other cases, the assurances obligate the recipient for the period during which the Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurances shall extend to the entire facility and to the facilities operated in connection therewith. ACTION shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. The assurances shall include provisions which give the United States the right to seek judicial enforcement.

(2) When Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose involving the provision of similar services or benefits. When no transfer of property of interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include a covenant in any subsequent transfer of the property. When the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by ACTION to revert title to the property in the event of a breach of the covenant where, in the discretion of ACTION, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on property for the purposes for which the property was transferred, ACTION may agree, on request of the transferee and if necessary to accomplish the financing, and on conditions as he deems appropriate, to subordinate a right of reversion to the lien of a mortgage or other encumbrance.

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) *Assurance from academic and other institutions.* (1) In the case of an application for Federal financial assistance by an academic institution, the assurance required by this section extends to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in Appendix A to this part) shall as a condition to its approval and the extension of Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with the requirements imposed by or pursuant to this part, and

(2) Provide or be accompanied by provision for methods of administration for the program as are found by ACTION to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under the program will comply with the requirements imposed by or pursuant to this part.

(Approved by the Office of Management and Budget under control number 3001-0016, paragraph (a)(1))

[39 FR 27322, July 26, 1974, as amended at 47 FR 3553, Jan. 26, 1982; 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.6 Compliance information.**

(a) *Cooperation and assistance.* ACTION, to the fullest extent practicable, shall seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep records and submit to ACTION timely, complete, and accurate compliance reports at the times, and in the form and containing the information ACTION may determine necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to other recipients, the other recipients shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for ACTION racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by ACTION during normal business hours to its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. When information required of a recipient is in the exclusive possession of an other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons the information regarding the provisions of this part and its applicability to the program for which the recipient received Federal financial assistance, and make this information available to them in the manner, as ACTION finds necessary, to apprise the persons of the protections against discrimination assured them by title VI and this part.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.7 Conduct of investigations.**

(a) *Periodic compliance reviews.* ACTION may from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with ACTION a written complaint. A complaint shall be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by ACTION.

(c) *Investigations.* ACTION will make a prompt investigation whenever a compliance review, report, complaint, or other information indicates a possible failure to comply with this part. The investigation will include, when appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, ACTION will so inform the recipient and the matter will be resolved by voluntary means whenever possible. If it has been determined that the matter cannot be resolved by voluntary means, action will be taken as provided for in §1203.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, ACTION will so inform, in writing, the recipient and the complainant, if any.

(e) *Intimidatory or retaliatory acts prohibited.* A recipient or other person shall not intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with a right or privilege secured by section 601 of title VI of this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential, except to the extent necessary to carry out the purposes of this part, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder.

#### **§ 1203.8 Procedure for effecting compliance.**

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by other means authorized by law.

(2) Other means may include, but are not limited to: (i) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under a law of the United States (including other titles of the Civil Rights Act of 1964) or an assurance or other contractual undertaking, and

(ii) An applicable proceeding under State or local law.

(b) *Noncompliance with §1203.5.* If an applicant fails or refuses to furnish an assurance required under §1203.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. ACTION shall not be required to provide assistance in that case during the pendency of the administrative proceedings under this paragraph. Subject, however, to §1203.12, ACTION shall continue assistance during the pendency of the proceedings where the assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* An order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall not become effective until—

(1) ACTION has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by informal voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Director pursuant to §1203.10(e); and

(4) The expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for the action.

An action to suspend or terminate or refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been so found.

(d) *Other means authorized by law.* An action to effect compliance with title VI by other means authorized by law shall not be taken by ACTION until—

(1) ACTION has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of a notice to the recipient or person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take corrective action as may be appropriate.

#### **§ 1203.9 Hearings.**

(a) *Opportunity for hearing.* When an opportunity for a hearing is required by §1203.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of notice within which the applicant or recipient may request of ACTION that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is deemed to be a waiver of the right to a hearing under section 602 of title VI and §1203.8(c) and consent to the making of a decision on the basis of the information available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of ACTION in Washington, DC, at a time fixed by ACTION unless it determines that the convenience of the applicant or recipient or of ACTION requires that

another place be selected. Hearings shall be held before the Director, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and ACTION have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and an administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with the rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both ACTION and the applicant or recipient are entitled to introduce relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. Decisions shall be based on the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI, ACTION may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this part. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with §1203.10.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.10 Decisions and notices.**

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Director may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. On the filing of the exceptions or of notice of review, the Director shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of the Director.

(b) *Decisions on record or review by the Director.* When a record is certified to the Director for decision or the Director reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Director conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Director will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to §1203.9, a decision shall be made by ACTION on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Director shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by ACTION.* A final decision by an official of ACTION other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or title VI, shall promptly be transmitted to the Director, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this part, including provisions designed to assure that Federal financial assistance to which this regulation applies will not thereafter be extended to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies ACTION that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request ACTION to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If ACTION determines that those requirements have been satisfied, it shall restore the eligibility.

(3) If ACTION denies a request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes ACTION is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by ACTION. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **§ 1203.11 Judicial review.**

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

#### **§ 1203.12 Effect on other regulations, forms, and instructions.**

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this part by ACTION which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin to which this part applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this part, except that nothing in this part relieves a person of an obligation assumed or imposed under a superseded regulation,

order, instruction, or like direction, before the effective date of this part. This part does not supersede any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued there under or

(2) Any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* ACTION shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies, and for which it is responsible.

(c) *Supervision and coordination.* ACTION may from time to time assign to officials of ACTION, or to officials of other departments or agencies of the Government with the consent of the departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI and this part (other than responsibilities for final decision as provided in §1203.10), including the achievement of effective coordination and maximum uniformity within ACTION and within the executive branch in the application of title VI and this part to similar programs and in similar situations. An action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though the action had been taken by ACTION.

[39 FR 27322, July 26, 1974, as amended at 68 FR 51387, Aug. 26, 2003]

#### **Appendix A to Part 1203—Federal Financial Assistance to Which This Part Applies**

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).
2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

#### **Appendix B to Part 1203—Federal Financial Assistance to Which This Part Applies When a Primary Objective of the Federal Financial Assistance Is To Provide Employment**

1. Grants for the development or operation of retired senior volunteer programs pursuant to section 601 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044).
2. Grants for the development and operation of foster grandparents projects pursuant to section 611 of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b).

### **PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING**

#### **Subpart A—Suspension and Termination of Assistance**

**Sec.**

**§ 1206.1-1 Purpose and scope.**

**§ 1206.1-2 Application of this part.**

**§ 1206.1-3 Definitions.**

**§ 1206.1-4 Suspension.**

**§ 1206.1-5 Termination.**

- § 1206.1-6 Time and place of termination hearings.
- § 1206.1-7 Termination hearing procedures.
- § 1206.1-8 Decisions and notices regarding termination.
- § 1206.1-9 Right to counsel; travel expenses.
- § 1206.1-10 Modification of procedures by consent.
- § 1206.1-11 Other remedies.

#### **Subpart B—Denial of Application for Refunding**

- § 1206.2-1 Applicability of this subpart.
- § 1206.2-2 Purpose.
- § 1206.2-3 Definitions.
- § 1206.2-4 Procedures.
- § 1206.2-5 Right to counsel.

*Authority:* 42 U.S.C. 5052.

[69 FR 19110, Apr. 12, 2004, unless otherwise noted]

#### **Subpart A—Suspension and Termination of Assistance**

##### **§ 1206.1-1 Purpose and scope.**

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps and AmeriCorps\*VISTA grants of assistance provided by the Corporation for National and Community Service pursuant to sections of titles I and II of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93–113, (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the Corporation for National and Community Service based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417(a) and (b) of Pub. L. 93–113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

##### **§ 1206.1-2 Application of this part.**

This subpart applies to programs authorized under titles I and II of the DVSA.

##### **§ 1206.1-3 Definitions.**

As used in this subpart—

(a) The term *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651 and includes each Corporation State Office and Service Center.

(b) The term *CEO* means the Chief Executive Officer of the Corporation.

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the Director of the AmeriCorps\*VISTA program, the appropriate Service Center Director and any Corporation Headquarters or State office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in §1206.1–4,

the term “responsible Corporation official” shall also include a designee of a Corporation official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under titles I and II of the DVSA in the form of grants or contracts involving Federal funds for the administration of which the Directors of the National Senior Service Corps and AmeriCorps\*VISTA have primary responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received financial assistance under titles I and II of the DVSA. The term “recipient” does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers or AmeriCorps\*VISTA members participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I and II.

(g) The term *party* in the case of a termination hearing means the Corporation, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of financial assistance to the recipient pursuant to §1206.1–5(e).

(h) The term *termination* means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

(i) The term *suspension* means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

#### **§ 1206.1-4 Suspension.**

(a) *General.* The responsible Corporation official may suspend financial assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in §1206.1–1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible Corporation official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible Corporation official shall notify the recipient by letter or by telegram that the Corporation intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible Corporation official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible Corporation official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible Corporation official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible Corporation official shall fix a

time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by the Corporation.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible Corporation official may on his own initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible Corporation official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible Corporation official sends the notification referred to in paragraphs (b) (2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b) (3) and (4) of this section. In addition the responsible Corporation official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b) (2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible Corporation official contemplated herein may request permission to do so from the responsible Corporation official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible Corporation official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible Corporation official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible Corporation official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b)(3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him the responsible Corporation official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with §1206.1-5, or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Corporation official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

Note: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible Corporation official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible Corporation official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with §1206.1–5 or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible Corporation official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of:

(i) Substantial injury to or loss of project funds or property, or

(ii) Violation of a Federal, State or local criminal statute, or

(iii) Violation of section 403 of the DVSA or of Corporation rules, regulations, guidelines and instructions implementing this section of the DVSA, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible Corporation official shall advise the recipient that it may request the Corporation to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible Corporation official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible Corporation official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible Corporation official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b)(6), (7), and (8) of this section. Agencies may submit written material to the responsible Corporation official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b)(6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with §1206.1–5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible Corporation official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible Corporation official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

#### **§ 1206.1-5 Termination.**

(a) If the responsible Corporation official believes that an alleged failure to comply with any requirement stated in §1206.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefore. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with §1206.1-6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§1206.1-7 and 1206.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by the Corporation. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in §1206.1-1. In any termination hearing, the Corporation shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in §1206.1-1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests the Corporation to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to the Corporation. The recipient shall promptly send to the Corporation a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible Corporation official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible Corporation official a list of all agencies notified and the date of notification.

(e) If the responsible Corporation official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with §1206.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Corporation and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any subsequent measure taken by the Corporation pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible Corporation official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible Corporation official

within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Corporation.

(h) The responsible Corporation official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

#### **§ 1206.1-6 Time and place of termination hearings.**

The termination hearing shall be held in Washington, DC, or in the appropriate Service Center or Corporation State Office, at a time and place fixed by the responsible Corporation official unless he determines that for the convenience of the Corporation, or of the parties or their representatives, requires that another place be selected.

#### **§ 1206.1-7 Termination hearing procedures.**

(a) *General.* The termination hearing, decision, and any review shall be conducted in accordance with the rules of procedure in this section and §§1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible Corporation official or, at the discretion of the responsible Corporation official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of the Corporation: *Provided*, That the attorney designated to assist him has not represented the Corporation or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both the Corporation and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to the Corporation, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and the Corporation, and, in the case of denial, a brief statement of the reasons for his decision: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing*. All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice*. The responsible Corporation official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the Corporation requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear*. The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to the Corporation of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service*. All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however*, That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of the Corporation.

(i) *Prehearing conferences*. Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence*. Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions*. If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice*. Official notice may be taken of a public document, or part of a public document, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the

United States, or any other matter of established fact within the general knowledge of the Corporation. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of §1206.1-8(a).

#### **§ 1206.1-8 Decisions and notices regarding termination.**

(a) Each decision of a presiding officer shall contain his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to §1206.1-7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the DVSA.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible Corporation official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible Corporation official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible Corporation official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible Corporation official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible Corporation official and a written copy of the final decision of the responsible Corporation official shall be given to the recipient.

(e) The recipient may request the CEO to review a final decision by the responsible Corporation official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the CEO or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Corporation official or remand the matter to the responsible Corporation official for further hearing or consideration. The decision of the responsible Corporation official will be given great weight by the CEO or his designee during the review. During the course of his review the CEO or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the CEO or his designee assistance shall remain suspended under the terms and conditions specified by the responsible Corporation official, unless the responsible Corporation official or the CEO or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the CEO or his designee within 30 days of receipt by the CEO of the recipient's request. The CEO or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

#### **§ 1206.1-9 Right to counsel; travel expenses.**

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to

participate in an informal meeting pursuant to §1206.1–4 or a termination hearing pursuant to §1206.1–7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day without the prior express written approval of the Corporation. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the federal government travel regulations. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to §1206.1–4 or a termination hearing pursuant to §1206.1–7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the federal government travel regulations.

#### **§ 1206.1-10 Modification of procedures by consent.**

The responsible Corporation official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to §1206.1–5(e). Such consent must be in writing or be recorded in the hearing transcript.

#### **§ 1206.1-11 Other remedies.**

The procedures established by this subpart shall not preclude the Corporation from pursuing any other remedies authorized by law.

### **Subpart B—Denial of Application for Refunding**

#### **§ 1206.2-1 Applicability of this subpart.**

This subpart applies to grantees and contractors receiving financial assistance and to sponsors who receive AmeriCorps\*VISTA members under the DVSA. The procedures in this subpart do not apply to review of applications for the following:

- (a) University Year for VISTA projects which have received federal funds for five years;
- (b) Mini-grants;
- (c) Other projects for which specific time limits with respect to federal assistance are established in the original notice of grant award or other document providing assistance, where the specified time limit has been reached; and
- (d) AmeriCorps\*VISTA project extensions of less than six months.

#### **§ 1206.2-2 Purpose.**

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding.

#### **§ 1206.2-3 Definitions.**

As used in this subpart—“Corporation”, “CEO”, and “recipient” are defined in accordance with §1206.1–3.

*Financial assistance and assistance* include the services of National Senior Service Corps volunteers and AmeriCorps\*VISTA members supported in whole or in part with Corporation funds provided under the DVSA.

*Program account* means assistance provided by the Corporation to support a particular program activity; for example, AmeriCorps\*VISTA, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

*Refunding* includes renewal of an application for the assignment of National Senior Service Corps volunteers and AmeriCorps\*VISTA members.

#### **§ 1206.2-4 Procedures.**

(a) The procedures set forth in paragraphs (b) through (g) of this section applies only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in subpart A.

(b) Before rejecting an application of a recipient for refunding the Corporation shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d) of this section.

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed Corporation resources or substantially failed to comply with Corporation policy and overall objectives under a contract or grant agreement with the Corporation, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with a Corporation official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by the Corporation. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after the Corporation has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by the Corporation as soon as possible after receipt of the request. The official who shall conduct this meeting shall be a Corporation official who is authorized to finally approve the refunding in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. The Corporation will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by the Corporation. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after the Corporation mails the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Corporation, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Service Center or Corporation State Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by the Corporation, after weighing the

convenience factors of the recipient. For the convenience of the recipient, the Corporation will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Corporation decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer's or AmeriCorps\*VISTA member's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer or member may be similarly extended. No volunteers or members may be reenrolled for a full 12-month term, or new volunteers or members enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, the Corporation and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

#### **§ 1206.2-5 Right to counsel.**

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives, at their own expense.

### **PART 1210—VISTA TRAINEE DESELECTION AND VOLUNTEER EARLY TERMINATION PROCEDURES**

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##### **Subpart D—National Grant Trainees and Volunteers**

- § 1210.4 Early termination procedures for National Grant Trainees and Volunteers.**

## Appendix A to Part 1210—Standard for Examiners

*Authority: Secs. 103(c), 402(14), Pub. L. 93–113, 87 Stat. 397 and 407.*

*[46 FR 35512, July 9, 1981, unless otherwise noted]*

### **Subpart A—General**

#### **§ 1210.1-1 Purpose.**

This part establishes procedures under which certain Trainees and Volunteers serving in ACTION programs under Pub. L. 93–113 will be deselected from training or terminated from service and how they may appeal their deselection or termination.

#### **§ 1210.1-2 Scope.**

(a) This part applies to all Trainees and Volunteers enrolled under part A of Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, as amended, (42 U.S.C. 4951 *et seq.*,) (hereinafter the “Act”) and full-time Volunteers serving under part C of title I of the Act.

(b) This part does not apply to the medical separation of any Trainee or Volunteer. Separate procedures, as detailed in the VISTA Handbook, are applicable for such separations.

#### **§ 1210.1-3 Definitions.**

(a) *Trainee* means a person enrolled in a program under part A of Title I of the Act or for full-time volunteer service under part C of Title I of the Act who has reported to training but has not yet completed training and been assigned to a project.

(b) *Volunteer* means a person enrolled and currently assigned to a project as a full-time Volunteer under part A of title I of the Act, or under part C of title I of the Act.

(c) *Sponsor* means a public or private nonprofit agency to which ACTION has assigned Volunteers.

(d) *Hearing Examiner* or *Examiner* means a person having the qualifications described in Appendix A who has been appointed to conduct an inquiry with respect to a termination.

(e) *National Grant Program* means a program operated under part A, title I of the Act in which ACTION has awarded a grant to provide the direct costs of supporting VISTA Volunteers on a national or multi-regional basis. VISTA Volunteers may be assigned to local offices or project affiliates. The national grantee provides overall training, technical assistance and management support for project operations.

(f) *Local component* means a local office or project affiliate of a national grantee to which VISTA Volunteers are assigned under the VISTA National Grants Program.

(g) *Termination* means the removal of a Volunteer from VISTA service by ACTION, and does not refer to removal of a Volunteer from a particular project which has been requested by a sponsor or Governor under §1210.3–2.

(h) *Deselection* means the removal of a Trainee from VISTA service by ACTION.

### **Subpart B—VISTA Trainee Deselection**

**§ 1210.2-1 Grounds for deselection.**

ACTION may deselect a Trainee out of a training program for any of the following reasons:

- (a) Failure to meet training selection standards which includes, but is not limited to, the following conduct:
  - (1) Inability or refusal to perform training assignments;
  - (2) Disruptive conduct during training sessions;
- (b) Conviction of any criminal offense under Federal, State or local statute or ordinance;
- (c) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;
- (d) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer; or
- (e) Refusal to accept Volunteer Placement.

**§ 1210.2-2 Procedure for deselection.**

- (a) The Regional Director or designee shall notify the Trainee in writing that ACTION intends to deselect the Trainee. The notice must contain the reasons for the deselection and indicate that the Trainee has 5 days to appeal.
- (b) The Trainee is placed on Administrative Hold at the time of the notice of deselection.
- (c) The Trainee has 5 days after receipt of the notice to appeal in writing to the Regional Director, or designee specified in the notice, furnishing any supportive documentation. In the appeal letter, the Trainee may request an opportunity to present his or her case in person.
- (d) If the Trainee does not respond to the notice, deselection becomes effective at the expiration of the Trainee's time to appeal.
- (e) Within 5 days after receiving the Trainee's appeal, if no personal presentation is requested, the Regional Director or designee must issue a decision. If a personal presentation is requested, the Regional Director or designee must schedule it within 5 days, and must issue a decision 5 days after such presentation. In either case, the decision of the Regional Director or designee is final.

**Subpart C—VISTA Volunteer Early Termination**

**§ 1210.3-1 Grounds for termination.**

ACTION may terminate or suspend a Volunteer based on the Volunteer's conduct for the following reasons:

- (a) Conviction of any criminal offense under Federal, State, or local statute or ordinance;
- (b) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;

- (c) Failure refusal or inability to perform prescribed project duties as outlined in the Project Narrative and/or volunteer assignment description and as directed by the sponsoring organization to which the Volunteer is assigned;
- (d) Involvement in activities which substantially interfere with the Volunteer's performance of project duties;
- (e) Intentional false statement, omission, fraud, or deception in obtaining selection as a Volunteer;
- (f) Any conduct on the part of the Volunteer which substantially diminishes his or her effectiveness as a VISTA Volunteer; or
- (g) Unsatisfactory performance of Volunteer assignment.

**§ 1210.3-2 Removal from project.**

(a) Removal of a Volunteer from the project assignment may be requested and obtained by a written request supported by a statement of reason by:

- (1) The Governor or chief executive officer of the State or similar jurisdiction in which the Volunteer is assigned or,
- (2) The sponsoring organization. The sole responsibility for terminating or transferring a Volunteer rests with the ACTION Agency.

(b) A request for removal of a Volunteer must be submitted to the ACTION State Director, who will in turn notify the Volunteer of the request. The State Director, after discussions with the Volunteer and in consultation with the Regional Director, if necessary, has 15 days to attempt to resolve the situation with the sponsor or the Governor's office. If the situation is not resolved at the end of the 15 day period, the Volunteer will be removed from the project and placed on Administrative Hold, pending a decision as set forth in paragraph (c) of this section.

(c) The State office will take one of the following actions concerning a Volunteer who has been removed from a project assignment:

- (1) Accept the Volunteer's resignation;
- (2) If removal was requested for reasons other than those listed in §1210.3-1, ACTION will attempt to place the Volunteer on another project. If reassignment is not possible, the Volunteer will be terminated for lack of suitable assignment, and he or she will be given special consideration for reinstatement; or
- (3) If removal from the project is approved based on any of the grounds for early termination as set forth in §1210.3-1, the Volunteer may appeal the termination grounds as detailed in subpart C of this part to establish whether such termination is supported by sufficient evidence. If ACTION determines that the removal based on grounds detailed in §1210.3-1 is not established by adequate evidence, then the procedures outlined in §1210.3-2(c)(2) will be followed.

(d) A Volunteer's removal during a term of service may also occur as a result of either the termination of, or refusal to renew, the Memorandum of Agreement between ACTION and the sponsoring organization, or the termination or completion of the initial Volunteer assignment. In such cases, the Volunteer will be placed in Administrative Hold status while the Regional Office attempts to reassign the Volunteer to another project. If no appropriate reassignment within the Region is found within the Administrative Hold period, the Volunteer will be terminated but will receive special consideration for reinstatement as soon as an appropriate assignment becomes available. If appropriate reassignment is offered the Volunteer and declined, ACTION has no obligation to offer additional or alternative assignments.

### **§ 1210.3-3 Suspension.**

(a) The ACTION State Director may suspend a Volunteer for up to 30 days in order to determine whether sufficient evidence exists to start termination proceedings against the Volunteer. Suspension is not warranted if the State Director determines that sufficient grounds already exist for the initiation of termination. In that event, the termination procedures contained in §1210.3-4 will be followed.

(b) Notice of suspension may be written or verbal and is effective upon delivery to the Volunteer. Within 3 days after initiation of the suspension, the Volunteer will receive a written notice of suspension setting forth in specific detail the reason for the suspension. During the suspension period the Volunteer may not engage in project activities, but will continue to receive all allowances, including stipend.

(c) At the end of the suspension period, the Volunteer must either be reassigned to a project, or termination proceedings must be initiated.

### **§ 1210.3-4 Initiation of termination.**

(a) *Opportunity for Resignation.* In instances where ACTION has reason to believe that a Volunteer is subject to termination for any of the grounds cited in §1210.3-1, an ACTION staff member will discuss the matter with the Volunteer. If, after the discussion, the staff member believes that grounds for termination exist, the Volunteer will be given an opportunity to resign. If the Volunteer chooses not to resign, the administrative procedures outlined below will be followed.

(b) *Notification of Proposed Termination.* The Volunteer will be notified, in writing by certified mail, of ACTION's intent to terminate him or her by the ACTION State Director at least 15 days in advance of the proposed termination date. The letter must give the reasons for termination, and notify the Volunteer that he or she has 10 days within which to answer in writing and to furnish any affidavits or written material. This answer must be submitted to the ACTION State Director or a designee identified in the notice of proposed termination.

(c) *Review and Notice of Decision.* (1) Within 5 working days after the date of receipt of the Volunteer's answer, the State Director or designee will send a written Notice of Decision to the Volunteer by certified mail. (If no answer is received from the Volunteer within the time specified, the State Director or designee will send such notice within 5 days after the expiration of the Volunteer's time to answer.)

(2) If the decision is to terminate the Volunteer, the Notice will set forth the reasons for the decision, the effective date of termination (which, if the Volunteer has filed an answer, may not be earlier than 10 days after the date of the Notice of Decision), and the fact that the Volunteer has 10 days in which to submit a written appeal to the Regional Director.

(3) A Volunteer who has not filed an answer pursuant to the procedures outlined above is not entitled to appeal the decision or request a hearing and may be terminated on the date of the Notice.

(d) *Allowances and Project Activities.* (1) A Volunteer who files an answer within the 10 days allowed by §1210.3-4(b) with the State Director or designee following receipt of the notice of proposed termination, will be placed in Administrative Hold status, and may continue to receive regular allowances, but no stipend, in accordance with ACTION policy, until the appeal is finally decided. The Volunteer may not engage in any project related activities during this time.

(2) If the proposed termination is reversed, the Volunteer's stipend and any other allowances lost during the period of review will be reinstated retroactively.

### **§ 1210.3-5 Preparation for appeal.**

(a) *Entitlement to Representation.* A Volunteer may be accompanied, represented and advised by a representative of the Volunteer's own choice at any stage of the appeal. A person chosen by the Volunteer must be willing to act as representative and not be disqualified because of conflict of position.

(b) *Time for Preparation and Presentation.* (1) A Volunteer's representative, if a Volunteer or an employee of ACTION, must be given a reasonable amount of time off from assignment to present the appeal.

(2) ACTION will not pay travel expenses or per diem travel allowances for either a Volunteer or the Volunteer's representative in connection with the preparation of the appeal, except to attend the hearing as provided in §1210.3-7(c)(5).

(c) *Access to Agency Records.* (1) A Volunteer is entitled to review any material in his or her official Volunteer folder and any relevant Agency documents to the extent permitted by the Privacy Act and the Freedom of Information Act, (5 U.S.C. 552a; 5 U.S.C. 552). Examples of documents which may be withheld from Volunteers include references obtained under a pledge of confidentiality, official Volunteer folders of other Volunteers and privileged intra-Agency memoranda.

(2) A Volunteer may review relevant documents in the possession of a sponsor to the same extent ACTION would be entitled to review them.

#### **§ 1210.3-6 Appeal of termination.**

(a) *Appeal to Regional Director.* A Volunteer has 10 days from the Notice of Decision issued by the State Director or designee in which to appeal to the Regional Director. The appeal must be in writing and specify the reasons for the Volunteer's disagreement with the decision. The Regional Director has 10 days in which to render a written decision on the Volunteer's appeal, indicating the reason for the decision. In notifying the Volunteer of the decision, the Regional Director must also inform the Volunteer of his or her opportunity to request the appointment of a Hearing Examiner and the procedure to be followed.

(b) *Referral to Hearing Examiner.* If the Volunteer is dissatisfied with the decision of the Regional Director, the Volunteer has 5 days in which to request the appointment of a Hearing Examiner. The Regional Director must act on that request within 5 days. The Hearing Examiner must possess the qualifications specified in Appendix A to this part, and may not be an employee of ACTION unless his or her principal duties are those of Hearing Examiner.

#### **§ 1210.3-7 Inquiry by Hearing Examiner.**

(a) *Scope of Inquiry.* (1) The Examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the termination. If the Examiner determines that the termination involves relevant disputed issues of fact, the Examiner must hold a hearing unless it is waived by the Volunteer. If the Examiner determines that the termination does not involve relevant disputed issues of facts, the Examiner need not hold a hearing, but must provide the parties an opportunity for oral presentation of their respective positions. At the Examiner's discretion, the inquiry may include:

- (i) The securing of documentary evidence;
- (ii) Personal interviews, including telephone interviews;
- (iii) Group meetings; or
- (iv) Affidavits, written interrogatories or depositions.

(2) The Examiner's inquiry shall commence within 7 days after referral by the Regional Director. The Examiner shall issue a report as soon as possible, but within 30 days after referral, except when a hearing is held. If hearing is held, the Examiner shall issue a report within 45 days after the referral.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

(1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making the decision.

(2) Ordinarily, attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with it. If requested by the Volunteer, the Examiner must open the hearing to the public.

(3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.

(4) Rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.

(5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.

(6) Testimony shall be under oath or affirmation, administered by the Examiner.

(7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who appear to testify.

(8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her own initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least 10 days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination, or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expense and per diem at standard Government rates for the Volunteer and a representative to attend the hearing.

(6) The Examiner may authorize payment of travel expense and per diem at standard Government rates for other necessary witnesses to attend the hearing if he or she determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories or deposition at less cost.

(d) *Report of Hearing.* (1) The Examiner shall determine how any hearing shall be reported and shall have either a verbatim transcript or written summary of the hearing prepared, which shall include all pertinent documents and exhibits submitted and accepted. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings.

(2) If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. When agreed to in writing, the summary constitutes the report of the hearing. If the Examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary will constitute the report of the hearing and shall be made part of the record of proceedings.

(3) The Volunteer may make a recording of the hearing at the Volunteer's own expense if no verbatim transcript is made.

#### **§ 1210.3-8 Termination file and Examiner's report.**

(a) *Preparation and Content.* The Examiner shall establish a termination file containing documents related to the termination, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The Examiner shall also prepare a report of findings and recommendations which shall be made part of the termination file.

(b) *Review by Volunteer.* On completion of the termination file, the Examiner shall make it available to the Volunteer and representative for review and comment before submission to the Director of VISTA. Any comments by the Volunteer or representative should be submitted to the Hearing Examiner for inclusion in the termination file not later than 5 days after the file is made available to them. The comments should identify those parts of the Examiner's report which support the appeal.

(c) *Submission of termination file.* Immediately upon receiving the comments from the Volunteer the Hearing Examiner shall submit the termination file to the Director of VISTA.

#### **§ 1210.3-9 Decision by Director of VISTA.**

The Director of VISTA shall issue a written decision, including a statement of the basis for the decision, within 10 days after receipt of the termination file. The decision of the Director of VISTA is the final Agency decision.

#### **§ 1210.3-10 Reinstatement of Volunteer.**

(a) If the Regional Director or Director of VISTA reinstates the Volunteer, the Regional Director may at his or her discretion reassign the Volunteer to the Volunteer's previous project or to another project. The Regional Director, in making such a decision, must request the Volunteer's views, but has the final decision on the Volunteer's placement.

(b) If the Volunteer's termination is reversed, stipend and other allowances lost during the appeal period will be paid retroactively.

#### **§ 1210.3-11 Disposition of termination and appeal files.**

All termination and appeal files shall be forwarded to the Director of VISTA after a final decision has been made and are subject to the provisions of the Privacy Act and Freedom of Information Act. No part of any successful termination appeal may be made part of, or included in, a Volunteer's official folder.

### **Subpart D—National Grant Trainees and Volunteers**

#### **§ 1210.4 Early termination procedures for National Grant Trainees and Volunteers.**

Trainees and Volunteers serving in the National Grant Program as defined in §1210.1–3(e) will be subject to the same termination procedure as standard VISTA Trainees and Volunteers with the following exceptions:

- (a) For Trainees, the deselection procedure, [See §1210.2–2] will be handled by the Project Manager in ACTION/Headquarters.
- (b) The Initiation of termination, [See §1210.3–4 (a) and (b)] will be handled by the VISTA Project Manager in ACTION/Headquarters, with the concurrence of the appropriate State Director. The Review and Notice of Decision, [See §1210.3–4(c)] will be handled by the VISTA Project Manager in ACTION/Headquarters.
- (c) The Appeal of termination, [See §1210.3–6(a)] will be handled by the Chief of VISTA Branch and not the Regional Director.
- (d) The final decision on a Volunteer appeal will be made by the Director of VISTA as provided in §1210.3.

#### **Appendix A to Part 1210—Standard for Examiners**

(a) An Examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1)(a) Current employment in Grades GS–12 or equivalent, or above;

(b) Satisfactory completion of a specialized course of training prescribed by the Office of Personnel Management for Examiners;

(c) At least four years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

—Identify and select appropriate sources of information; collect, organize, analyze and evaluate information; and arrive at sound conclusions on the basis of that information;

—Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;

—Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

—Interpret and apply regulations and other complex written material;

—Communicate effectively orally and in writing, including the ability to prepare clear and concise written reports; and

—Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

—The relationship between Volunteer administration and overall management concerns; and

—The principles, systems, methods and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management's register for Hearing Examiner, GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators.

(b) A former Federal employee who, at the time of leaving the Federal service, was in Grade GS-12 or equivalent, or above, and who meets all the requirements specified for an Examiner except completion of the prescribed training course, may be used as an Examiner upon satisfactory completion of the training course.

## **PART 1211—VOLUNTEER GRIEVANCE PROCEDURES**

### **Sec.**

**§ 1211.1-1 Purpose.**

**§ 1211.1-2 Applicability.**

**§ 1211.1-3 Definitions.**

**§ 1211.1-4 Policy.**

**§ 1211.1-5 Matters not covered.**

**§ 1211.1-6 Freedom to initiate grievances.**

**§ 1211.1-7 Entitlement to representation.**

**§ 1211.1-8 Time for preparation and presentation.**

**§ 1211.1-9 Access to agency records.**

**§ 1211.1-10 Informal grievance procedure.**

**§ 1211.1-11 Initiation of formal grievance procedure.**

**§ 1211.1-12 Investigation by Grievance Examiner.**

**§ 1211.1-13 Grievance file and examiner's report.**

**§ 1211.1-14 Final determination by Director of VISTA.**

**§ 1211.1-15 Disposition of grievance appeal files.**

**§ 1211.1-16 Grievance procedure for National VISTA Grant Volunteers.**

**Appendix A to Part 1211—Standards for Examiners**

*Authority: Secs. 104(d), 402(14), 420, Pub. L. 93-113, 87 Stat. 398, 407, and 414.*

*[45 FR 39271, June 10, 1980, unless otherwise noted]*

### **§ 1211.1-1 Purpose.**

This part establishes procedures under which certain volunteers enrolled under Pub. L. 93-113 may present and obtain resolution of grievances.

### **§ 1211.1-2 Applicability.**

This part applies to all volunteers enrolled under part A of title I of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113, (42 U.S.C. 4951 *et seq.*).

### **§ 1211.1-3 Definitions.**

(a) *Volunteer* means a person enrolled and currently serving as a full-time volunteer under part A of title I of the Domestic Volunteer Service Act of 1973. For the purpose of this part, a volunteer whose service has terminated shall be deemed to be a volunteer for a period of 90 days thereafter.

(b) *Grievance* means a matter arising out of, and directly affecting, the volunteer's work situation, or a violation of those regulations governing the terms and conditions of service resulting in the denial or infringement of a right or benefit to the grieving volunteer. Terms and conditions of service refer to those rights and privileges accorded the volunteer either through statute, Agency regulation, or Agency policy.

(1) The relief requested must be directed toward the correction of the matter involving the affected individual volunteer or the affected group of volunteers and may request the revision of existing policies and procedures to ensure against similar occurrences in the future. Requests for relief by more than one volunteer arising from a common cause within one region may be treated as a single grievance. The following are examples of grievable matters:

(i) A volunteer is assigned to an area of harsh climate where special clothing is necessary and not already possessed by the volunteer. A request for a special allowance for such clothing is arbitrarily refused.

(ii) A volunteer submits a request for reimbursement for transportation costs incurred while on authorized emergency leave which is denied.

(iii) The project sponsor fails to provide adequate support to the volunteer necessary for that volunteer to perform the assigned work, such as the sponsor's failure to provide materials to the volunteer which is necessary for the performance of the volunteer's work.

(c) *State Program Officer* means that ACTION official who is directly responsible at the first level for the project in which the volunteer is serving.

(d) *Sponsor* means a public or private nonprofit agency to which ACTION has assigned volunteers.

(e) *Grievance Examiner* or *Examiner* means a person having the qualifications described in Appendix A who is appointed to conduct an inquiry or hearing with respect to a grievance.

(f) *National VISTA Grants Program* means a program operated under part A, title I of the Domestic Volunteer Service Act in which ACTION awards a grant to a national grantee to operate a VISTA Volunteer program on a national or multi-regional basis.

(g) *Local component* means a local office or project affiliate of a national grantee which has VISTA Volunteers assigned to it under the National VISTA Grants Program.

(h) The *Act* means the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, (42 U.S.C. 4951 *et seq.*), as amended.

#### **§ 1211.1-4 Policy.**

It is ACTION's policy to provide volunteers the widest latitude to present their grievances and concerns to appropriate officials of ACTION and of sponsoring organizations. This regulation is designed to assure that the rights of individual volunteers are recognized and to provide formal ways for them to seek redress with confidence that they will obtain just treatment.

#### **§ 1211.1-5 Matters not covered.**

Matters not within the definition of a grievance as defined in §1211.1–3(b) are not eligible for processing under this procedure. The following are specific examples of excluded areas and are not intended as a complete listing of the matters excluded by this part:

- (a) The establishment of a volunteer project, its continuance or discontinuance, the number of volunteers assigned to it, increases or decreases in the level of support provided to a project, suspension or termination of a project, or selection and retention of project staff.
- (b) Matters for which a separate administrative procedure is provided.
- (c) The content of any law, published rule, regulation, policy or procedure.
- (d) Matters which are, by law, subject to final administrative review outside ACTION.
- (e) Actions taken in compliance with the terms of a contract, grant, or other agreement.
- (f) The internal management of the ACTION Agency unless such management is specifically shown to individually and directly affect the volunteer's work situation or the terms and conditions of service as defined in §1211.1–3(b).

**§ 1211.1-6 Freedom to initiate grievances.**

The initiation of a grievance shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that each supervisor and sponsor, as well as ACTION and its employees, maintain a healthy atmosphere in which a volunteer can speak freely and have frank discussions of problems. A volunteer who initiates a grievance shall not as a result of such an action be subjected to restraint, interference, coercion, discrimination or reprisal.

**§ 1211.1-7 Entitlement to representation.**

A volunteer may be accompanied, represented, and advised by a representative of the volunteer's own choice at any stage of the proceeding. The volunteer shall designate his or her representative in writing. A person chosen by the volunteer must be willing to act as representative and have no conflict between his or her position and the subject matter of the grievance.

**§ 1211.1-8 Time for preparation and presentation.**

- (a) Both a volunteer and a volunteer's representative, if another volunteer or an employee of ACTION, must be given a reasonable amount of administrative leave from their assignments to present a grievance or appeal.
- (b) ACTION will not pay travel expense or per diem travel allowances for either a volunteer or his or her representative in connection with the preparation of a grievance or appeal, except in connection with a hearing and the examination of the grievant file as provided in §1211.1–12(c).

**§ 1211.1-9 Access to agency records.**

- (a) A volunteer is entitled to review any material in his or her official volunteer folder and any relevant Agency documents to the extent permitted by the Freedom of Information Act and the Privacy Act, as amended, 5 U.S.C. 552, U.S.C. 552a. Examples of documents which may be withheld from volunteers include references obtained under a pledge of confidentiality, official volunteer folders of other volunteers, and privileged intra-agency documents.

(b) A volunteer may review relevant documents in the possession of a sponsor to the extent such documents are disclosable under the Freedom of Information Act and Privacy Act.

**§ 1211.1-10 Informal grievance procedure.**

(a) *Initiation of grievance.* A volunteer may initiate a grievance within 15 calendar days after the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. A grievance arising out of a continuing condition or practice that individually affects the volunteer may be brought at any time. A volunteer initiates a grievance by presenting it in writing to the chief executive officer of the sponsor, or the representative designated to receive grievances from volunteers. The designated representative may not be the immediate supervisor of volunteers assigned to the sponsor. The chief executive officer of the sponsor or the designated representative shall respond in writing to the grievance within five (5) working days after receipt. The chief executive officer or designee may not refuse to respond to a complaint on the basis that it is not a grievance as defined in §1211.1-3(b), or that it is excluded from coverage under §1211.1-5, but may, in the written response, refuse to grant the relief requested on either of these grounds.

If the grievance involves a matter over which the sponsor has no control, or if the chief executive officer is the immediate supervisor of the volunteer, the procedures described in this section may be omitted, and the volunteer may present the grievance in writing directly to the State Director or designee as described in paragraph (b) of this section within the time limits specified in this paragraph (a).

(b) *Consideration by ACTION State Director or designee.* If the matter is not resolved to the volunteer's satisfaction by the sponsor's chief executive officer, the volunteer may submit the grievance in writing to the ACTION State Director or designee within five (5) working days after receipt of the decision of the sponsor's chief executive officer. The State Director or designee may not refuse to receive a complaint, even if he or she believes it does not constitute a grievance, and shall respond to it in writing within five (5) working days after receipt. The response may indicate that the matter is not grievable. If the State Director or designee fails to meet the time limit for response, the volunteer may initiate a formal grievance.

(c) *Discussion.* All parties to the informal grievance procedure must be prepared to participate in full discussion of the grievance, and to permit the participation of others who may have knowledge of the circumstances of the grievance in the discussion. State Program Officers and other ACTION employees may participate in discussions and provide guidance with respect to ACTION policies and procedures, at the request of any party, even prior to submission of a grievance to them.

(d) *Sponsor grievance procedure.* A sponsor may substitute its own grievance procedure for the procedure described in paragraph (a) of this section. Any such procedure must provide the volunteer with an opportunity to present a grievance at least as comprehensive as that contained in this section, must meet the time limits of this section, and must be provided in writing to all volunteers. In order to utilize its own grievance procedures, the sponsor must obtain approval of the procedure from the ACTION State Director and file a copy of this approved procedure with the State Office.

**§ 1211.1-11 Initiation of formal grievance procedure.**

(a) *Submission of grievance to Regional Director.* If a volunteer is dissatisfied with the response of the State Director or designee required by §1211.1-10(b), he or she may present the grievance in writing to the Regional Director. To be eligible for the formal grievance procedure, the volunteer must have completed action under the informal procedure contained in §1211.1-10 or have alleged that the State Director or designee exceeded the time specified for response.

(b) *Contents of grievance.* The volunteer's grievance must be in writing, contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the volunteer or a person designated in writing by the volunteer to be the representative for the purpose of the grievance.

(c) *Time limit.* The volunteer must submit the grievance to the Regional Director or designee no later than 15 calendar days after receipt of the informal response by the State Director or designee. If no response is received by the volunteer 15 calendar days after the grievance is received by the State Director or designee, the volunteer may submit the grievance directly to the Regional Director or designee for consideration.

(d) *Within ten (10) working days of the receipt of the grievance, the Regional Director or designee shall, in whole or in part, either decide it on its merits or reject the grievance.* A grievance may be rejected, in whole or in part, for the following reasons:

(1) It was not filed within the time limit specified in paragraph (c) of this section, or

(2) The grievance consists of matters not contained within the definition of a grievance.

(e) *Rejection of a grievance by the Regional Director or designee may be appealed by the volunteer within ten (10) days of receipt of the notice to the Office of General Counsel.* The Office shall immediately request the grievance file from the Regional Director and, within five (5) working days of receipt of it, determine the appropriateness of the rejection. If the grievance was properly rejected by the Regional Director, the Office shall so notify the volunteer of its opinion and the reasons supporting it, and that such rejection is the final Agency decision in the matter. If the Office determines that the grievance was improperly rejected, it shall return the grievance to the Regional Director for a determination on its merits by the Regional Director. Within ten (10) working days of such notification and receipt of the grievance file, the Regional Director or designee shall notify the volunteer in writing of the decision on the merits and specify the grounds for the decision and of the volunteer's right to appeal.

(f) *Time Limit.* If a volunteer is dissatisfied with the decision of the Regional Director or designee on the merits of the grievance, he or she shall notify the Regional Director within five (5) calendar days from receipt of the decision and request the appointment of an Examiner. If the volunteer receives no response from the Regional Director or Office of General Counsel as required by paragraphs (d) and (e) of this section within five (5) calendar days after the prescribed time limits, the volunteer may request in writing that the Regional Director appoint a Grievance Examiner. Upon receipt of this request, the Regional Director or designee shall appoint within five (5) calendar days an Examiner who shall possess the qualifications specified in Appendix A to this part.

#### **§ 1211.1-12 Investigation by Grievance Examiner.**

(a) *Scope of investigation.* The Examiner shall conduct an investigation of a nature and scope appropriate to the issues involved in the grievance.

Unless waived by the volunteer, a hearing must be held if the Examiner finds that the grievance involves disputed questions of fact that go to the heart of the agency determination. Only those facts found necessary by the Examiner on which to base his or her findings go to the heart of the Agency determination.

If the grievance does not involve such disputed questions of fact, or if the volunteer waives a hearing, the Examiner need not hold a hearing but must provide the parties an opportunity for presentation of their respective positions. At the Examiner's discretion, the investigation may include:

(1) The securing of documentary evidence,

(2) Personal interviews, including telephone interviews,

(3) Group meetings,

(4) Affidavits, written interrogatories or depositions.

(b) *Conduct of Hearing.* If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

- (1) The hearing shall be held at a time and place determined by the Examiner who shall consider the convenience of parties and witnesses and expense to the Government in making his or her decision.
- (2) Attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with the grievance. If requested by the volunteer, the Examiner must open the hearing to the public.
- (3) The hearing shall be conducted so as to bring out pertinent facts, including the production of pertinent records.
- (4) Formal rules of evidence shall not be applied strictly, but the Examiner may exclude irrelevant or unduly repetitious testimony or evidence.
- (5) Decisions on the admissibility of evidence or testimony shall be made by the Examiner.
- (6) Testimony shall be under oath or affirmation, administered by the Examiner.
- (7) The Examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material, and to cross-examine witnesses who testify.
- (8) The Examiner may exclude any person from the hearing for conduct that obstructs the hearing.

(c) *Witnesses.* (1) All parties are entitled to produce witnesses.

(2) Volunteers, employees of a sponsor, and employees of ACTION shall be made available as witnesses when requested by the Examiner. The Examiner may request witnesses on his or her initiative. Parties shall furnish to the Examiner and to opposing parties a list of proposed witnesses, and an explanation of what the testimony of each is expected to show, at least ten (10) calendar days before the date of the hearing. The Examiner may waive the time limit in appropriate circumstances.

(3) Employees of ACTION shall remain in a duty status during the time they are made available as witnesses.

(4) Volunteers, employees and any other persons who serve as witnesses shall be free from coercion, discrimination or reprisal for presenting their testimony.

(5) The Examiner must authorize payment of travel expenses and per diem at standard Government rates for the volunteer and the representative to attend the hearing. Payment of travel expenses and per diem at standard Government rates for other witnesses to attend the hearing are authorized only after the Examiner determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories, or deposition, at a lesser cost.

(d) *Recording of Hearing.* A grievant may make a recording of the hearing at his or her own expense if no verbatim transcript is made. Such a recording is in no way to be treated as the official transcript of the hearing.

(e) *Report of Hearing.* The Examiner shall normally prepare a written summary of the hearing which shall include all documents and exhibits submitted to and accepted by the Examiner during the course of the grievance. An Examiner may require a verbatim transcript if he or she determines that the grievance is so complex as to require such a transcript. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings. If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. In such cases, the summary together with exhibits shall constitute

the report of the hearing. The parties are entitled to submit written exceptions to any part of the summary, and these written exceptions shall be made part of the record of proceedings.

#### **§ 1211.1-13 Grievance file and examiner's report.**

(a) *Preparation and content.* The Examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The file shall also contain the Examiner's report of findings and recommendations.

(b) *Review by volunteer.* On completion of the inquiry, the Examiner shall make the grievance file available to the volunteer and the representative, if any, for review and comment. Their comments, if any, shall be submitted to the Examiner within five (5) calendar days after the file is made available and shall be included in the file.

(c) *Examiner's report.* After the volunteer has been given an opportunity to review the grievance file, the Examiner shall submit the complete grievance file to the Director of VISTA.

#### **§ 1211.1-14 Final determination by Director of VISTA.**

The Director of VISTA or designee shall issue a written decision on the appeal to the volunteer within ten (10) working days after receipt of the appeal file. The decision shall include a statement of the basis for the determination, and shall be the final Agency decision.

#### **§ 1211.1-15 Disposition of grievance appeal files.**

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All grievance appeal files shall be retained by the Director of VISTA after the grievance has been settled, or a final decision has been made and implemented. No part of a grievance or appeal file may be made part of, or included in, a volunteer's official folder.

#### **§ 1211.1-16 Grievance procedure for National VISTA Grant Volunteers.**

The grievance procedure for National VISTA Grant Volunteers shall be the same as that provided in this part with the following substitutions of officials:

(a) Informal grievance procedure:

(1) The initiation of an informal grievance for a National Grant VISTA, see §1211.1-10, shall normally be to the sponsor of the local component. If the grievance involves a matter solely within the control of the ACTION State Office, the volunteer may present the grievance to the State Director or designee in lieu of the local component sponsor.

(2) If the volunteer is not satisfied with the response of the appropriate official (sponsor of local component, or State Director or designee), the volunteer may submit the grievance to the chief executive of the national grantee.

(b) Formal grievance procedure:

The Chief, VISTA Program Development Branch or designee shall replace the Regional Director as the official in §1211.1-11.

#### **Appendix A to Part 1211—Standards for Examiners**

An examiner must meet the requirements specified in either paragraph (1), (2), (3), or (4) of this appendix:

(1) Current or former federal employees now or formerly in grade GS-12 or equivalent, or above who have:

(a) At least four (4) years of progressively responsible experience in administrative, managerial, professional, investigative, or technical work which has demonstrated the possession of:

(i) The personal attributes essential to the effective performance of the duties of an Examiner, including integrity, discretion, reliability, objectivity, impartiality, resourcefulness, and emotional stability.

(ii) A high degree of ability to:

Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information; and arrive at sound conclusions on the basis of that information;

Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practicable recommendations or decisions on the basis of facts;

Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;

Interpret and apply regulations and other complex written material;

Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and

Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.

(iii) A good working knowledge of:

The relationship between volunteer administration and overall management concerns; and

The principles, systems, methods, and administrative machinery for accomplishing the work of an organization.

(2) Designation as an arbitrator on a panel of arbitrators maintained by either the Federal Mediation and Conciliation Service or the American Arbitration Association.

(3) Current or former employment as, or current eligibility on the Office of Personnel Management register for Examiners

GS-935-0.

(4) Membership in good standing in the National Academy of Arbitrators

#### **PART 1212—RESERVED**

#### **PART 1214—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ACTION**

**Sec.**

**§ 1214.101 Purpose.**

**§ 1214.102 Application.**

**§ 1214.103 Definitions.**

**§§ 1214.104-1214.109 [Reserved]**

**§ 1214.110 Self-evaluation.**

**§ 1214.111 Notice.**

**§§ 1214.112-1214.129 [Reserved]**

**§ 1214.130 General prohibitions against discrimination.**

**§§ 1214.131-1214.139 [Reserved]**

**§ 1214.140 Employment.**

**§§ 1214.141-1214.148 [Reserved]**

**§ 1214.149 Program accessibility: Discrimination prohibited.**

**§ 1214.150 Program accessibility: Existing facilities.**

**§ 1214.151 Program accessibility: New construction and alterations.**

**§§ 1214.152-1214.159 [Reserved]**

**§ 1214.160 Communications.**

**§§ 1214.161-1214.169 [Reserved]**

**§ 1214.170 Compliance procedures.**

*Authority: 29 U.S.C. 794; 42 U.S.C. 5057.*

*[55 FR 47761, Nov. 15, 1990, unless otherwise noted]*

**§ 1214.101 Purpose.**

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 1214.102 Application.**

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

**§ 1214.103 Definitions.**

For purposes of this part, the term—

*Agency* means ACTION.

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504 of the Act. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Individuals with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limit major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §1214.140.

*Section 504 of the Act* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 of the Act applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

**§§ 1214.104-1214.109 [Reserved]**

**§ 1214.110 Self-evaluation.**

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

**§ 1214.111 Notice.**

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 of the Act and this part.

**§§ 1214.112-1214.129 [Reserved]**

**§ 1214.130 General prohibitions against discrimination.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

- (i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;
  - (ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
  - (iii) Provide a qualified individual with handicaps with aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
  - (iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;
  - (v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or
  - (vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
- (2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would be to—
- (i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or
  - (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
- (4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—
- (i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or
  - (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
- (5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.
- (c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.
  - (d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

**§§ 1214.131-1214.139 [Reserved]**

**§ 1214.140 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 1214.141-1214.148 [Reserved]**

**§ 1214.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in §1214.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§ 1214.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1214.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the agency official responsible for implementation of the plan.

**§ 1214.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

**§§ 1214.152-1214.159 [Reserved]**

**§ 1214.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid will be provided, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide a sign at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be displayed at each primary entrance to each accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1214.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 1214.161-1214.169 [Reserved]**

**§ 1214.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Equal Opportunity Staff.

**PART 1216—NONDISPLACEMENT OF EMPLOYED WORKERS AND NONIMPAIRMENT OF CONTRACTS FOR SERVICE**

**Sec.**

**§ 1216.1-1 Purpose.**

**§ 1216.1-2 Applicability of this part.**

**§ 1216.1-3 Policy.**

**§ 1216.1-4 Exceptions.**

*Authority: Secs. 402(12), 404(a), 420 of Pub. L. 93-113, 87 Stat. 394, 408, 414.*

*[40 FR 16209, Apr. 10, 1975, unless otherwise noted]*

**§ 1216.1-1 Purpose.**

This part establishes rules to assure that the services of volunteers are limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of, or result in the displacement of, employed workers or impair existing contracts for service. It implements section 404(a) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113 (the "Act").

**§ 1216.1-2 Applicability of this part.**

(a) All full-time and part-time volunteers assigned, referred or serving pursuant to grants, contracts, or agreements made pursuant to the Act.

(b) All agencies and organizations to which the volunteers in paragraph (a) of this section are assigned, referred or provide services.

**§ 1216.1-3 Policy.**

(a) Volunteers enrolled or participating in programs referred to in paragraphs (a) and (b) of §1216.1-2 may not perform any services or duties or engage in activities which would otherwise be performed by an employed worker as part of his assigned duties as an employee.

(b) Volunteer referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which will supplant the hiring of employed workers. This prohibition is violated if, prior to engaging a volunteer, an agency or organization referred to in §1216.1-2(c) had intended to hire a person to undertake all or a substantial part of the services, duties, or other activities to be provided by the volunteer.

(c) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which result in the displacement of employed workers. Such volunteers may not perform services or duties which have been performed by or were assigned to, any of the following:

- (1) Presently employed workers,
- (2) Employees who recently resigned or were discharged,
- (3) Employees who are on leave (terminal, temporary, vacation, emergency, or sick), or
- (4) Employees who are on strike or who are being locked out.

(d) Volunteers referred to in paragraph (a) of this section may not perform any services or duties or engage in activities which impair existing contracts for service. This prohibition is violated if a contract for services is modified or cancelled because an agency or organization referred to in §1216.1-2(b) engages a volunteer to provide or perform all or a substantial part of any services, duties, or other activities set forth in such contract. The term “contract for services” includes but is not limited to contracts, understandings and arrangements, either written or oral, to provide professional, managerial, technical, or administrative services.

(e) Agencies and organizations referred to in §1216.1-2(b) are prohibited from assigning or permitting volunteers referred to in §1216.1-2(a) to perform any services or duties or engage in any activities prohibited by paragraphs (a) through (d) of this section.

**§ 1216.1-4 Exceptions.**

(a) The requirements of §1216.1-3 are not applicable to the following, or similar, situations:

- (1) Funds are unavailable for the employment of sufficient staff to accomplish a program authorized or of a character eligible for assistance under the Act and the activity, service, or duty is otherwise appropriate for the assignment of a volunteer.
- (2) Volunteer services are required in order to avoid or relieve suffering threatened by or resulting from major natural disasters or civil disturbances.
- (3) Reasonable efforts to obtain employed workers have been unsuccessful due to the unavailability of persons within the community who are able, willing, and qualified to perform the needed activities.

(4) The assignment of volunteers will significantly expand services to a target community over those which could be performed by existing paid staff, and the activity, service or duty is otherwise appropriate for the assignment of a volunteer and no actual displacement of paid staff will occur as a result of the assignment.

(b) For the purposes of paragraphs (a)(1) and (4) of this section, the assignment is not appropriate for the assignment of a volunteer if:

(1) The service, duty, or activity is principally a routine administrative or clerical task. This definition applies only to any service, duty, or activity performed by a volunteer receiving financial support apart from reimbursement for expenses.

(2) The volunteer is not directly in contact with groups or individuals whom the Act is designed to serve or is not performing services, duties, or engaged in activities authorized or of a character eligible for assistance under the Act.

## **PART 1217—VISTA VOLUNTEER LEADER**

### **Sec.**

§ 1217.1 Introduction.

§ 1217.2 Establishment of position.

§ 1217.3 Qualifications.

§ 1217.4 Selection procedure.

§ 1217.5 Allowances and benefits.

§ 1217.6 Roles of volunteers.

*Authority: Secs. 104(b) and 420 of Pub. L. 93–113, 87 Stat. 398 and 414.*

*[39 FR 44203, Dec. 23, 1974, unless otherwise noted]*

### **§ 1217.1 Introduction.**

Section 105(a)(1), Part A, of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 398, authorizes the Director of ACTION to pay VISTA volunteers a stipend not to exceed \$50 per month and a stipend not to exceed \$75 a month in the case of VISTA volunteers who have served for at least a year and have been designated volunteer leaders. Section 105(a)(1) further provides that the selection of volunteer leaders shall be pursuant to standards, established in regulations which the Director shall prescribe, which shall be based upon the experience and special skills and the demonstrated leadership of such persons among volunteers.

### **§ 1217.2 Establishment of position.**

A request for the proposed establishment of VISTA volunteer leader position for a specific project shall be submitted by a sponsor in writing in advance to the appropriate ACTION Regional Director. Specific tasks, responsibilities, qualifications, and the proposed supervisory structure are to be detailed in the request.

### **§ 1217.3 Qualifications.**

A volunteer recommended for a VISTA volunteer leader position must have:

(a) Completed a one-year term as a VISTA volunteer.

(b) Demonstrated ability to work constructively and communicate with volunteers, supervisor/sponsor, and the target population.

- (c) Demonstrated ability to work well with and gain acceptance of other volunteers.
- (d) Demonstrated ability to provide self-motivation and self-direction, and maturity to accept supervision and direction from supervisor/sponsor.
- (e) Sensitivity to the needs and attitudes of others, and exhibit a sincere commitment to the mission of VISTA.

**§ 1217.4 Selection procedure.**

(a) *Nomination.* Candidates may be nominated in writing to the Regional Director by the Program Officer or the State Program Director in whose area the volunteer serves. The nomination shall include a copy of the completed ACTION Form V-95a, for the Regional Director's review.

(b) *Selection.* VISTA volunteer leaders will be selected by the Regional Director (or his designee). The criteria for selection shall include:

- (1) The recommendation of the volunteer by the State Program Director or Program Officer.
- (2) An overall rating by the supervisor/sponsor of above average on the ACTION Form V-95a.
- (3) A description of specific tasks, responsibilities, qualifications, and the proposed supervisory structure, which justifies the establishment of the VISTA volunteer leader position. A selection decision is final.

(c) *Reenrollment.* VISTA volunteer leaders may be reenrolled in accordance with the VISTA reenrollment and extension policy.

**§ 1217.5 Allowances and benefits.**

The VISTA volunteer leader shall be entitled to all allowances and benefits of a VISTA volunteer at the level which is consistent with the level for all volunteers on his/her project, except that:

- (a) The stipend will be increased from \$50 to \$75 per month effective on the date of selection of the VISTA volunteer leader.
- (b) Support for on-the-job transportation may be increased, consistent with ACTION policy.

**§ 1217.6 Roles of volunteers.**

VISTA volunteer leaders may have the following roles:

- (a) Primary contact with VISTA volunteers on personal and administrative matters.
- (b) Aid in communication of VISTA policies to VISTA volunteers.
- (c) Encourage and develop VISTA volunteer leadership and initiative on projects.
- (d) Aid as a resource in development and conduct of training programs.
- (e) Assist sponsor in preparation for arrival of VISTA volunteers, and assist new volunteers in settling-in, housing, orientation, etc.

(f) Aid in the development of meaningful relationship and understanding of individual program concepts with VISTA volunteers and supervisor/sponsor.

(g) Advise supervisor on potential problem areas, and needs of VISTA volunteers.

(h) Aid supervisor/sponsor in the redevelopment of projects to best meet goals and objectives addressing the community's problem(s).

## **PART 1218—VISTA VOLUNTEERS—HEARING OPPORTUNITY**

### **Sec.**

#### **§ 1218.1 Introduction.**

#### **§ 1218.2 Applicability.**

#### **§ 1218.3 Policy.**

#### **§ 1218.4 Standards for regional plan.**

#### **§ 1218.5 Procedures for approval of plan.**

#### **§ 1218.6 Freedom to present views.**

*Authority: Secs. 104(d), 402(14) and 420 of Pub. L. 93–113, 87 Stat. 398, 407 and 414.*

*[39 FR 43725, Dec. 18, 1974, unless otherwise noted]*

#### **§ 1218.1 Introduction.**

Section 104(d) of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 398 requires that the Director of ACTION establish a procedure, including notice and an opportunity to be heard, for VISTA volunteers to present views in connection with the terms and conditions of their service.

#### **§ 1218.2 Applicability.**

This part applies to all volunteers enrolled under part A of title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 396.

#### **§ 1218.3 Policy.**

It is ACTION's policy to encourage the free exchange of views between volunteers and staff members with respect to the terms and conditions of the volunteers' service. Ordinarily these exchanges occur in the day-to-day contact between volunteers and staff. However, there are occasions when it is desirable to provide volunteers with an opportunity to present their views with respect to the terms and conditions of their service in a more formal way. The differences between ACTION regions require that the means selected in each region to accomplish this result be appropriate to its particular needs. This regulation provides standards within which regions must establish a procedure to enable volunteers to present their views to be heard with respect to the terms and conditions of their service on a regular basis by appropriate ACTION officials and receive a timely response to their concerns.

#### **§ 1218.4 Standards for regional plan.**

Each ACTION Domestic Regional Director shall recommend, after consultation with representative volunteers, sponsors, and other interested persons, the specific procedures to be established for VISTA volunteers to present their views concerning the terms and conditions of their service. Each proposed plan must incorporate the following features:

(a) A free and open opportunity for volunteers to communicate their views to appropriate ACTION regional office officials.

(b) An opportunity for all volunteers to be heard with respect to their views in connection with the terms and conditions of their service by a responsible ACTION regional office official, either personally, or through democratically selected representatives, on a regular basis. The plan must provide such an opportunity to the volunteer at least twice in each year, and provide for notice to volunteers of the time and place of the meeting at which they may be heard.

(c) Appropriate provisions with respect to volunteers' or volunteers' representatives travel expense and per diem which enable the volunteers or their representatives to attend and present their views to the regional office officials at scheduled meetings.

(d) Response to volunteer's views by appropriate ACTION officials in a prescribed period of time.

(e) Summary reports by each Regional Director to the Deputy Associate Director for VISTA and ACTION Education Programs of problems and concerns expressed by volunteers concerning terms and conditions of their service and action taken in response to such problems and concerns.

(f) An opportunity for any volunteer who feels that his/her concerns have not been properly addressed to communicate the same to the Regional Director. Such communication shall be included in the Regional Director's report to the Deputy Associate Director and shall be reviewed by him.

#### **§ 1218.5 Procedures for approval of plan.**

Each Regional Director shall submit the plan for his region to the Deputy Associate Director, VISTA and ACTION Education Programs for approval.

Approval by the Deputy Associate Director for VISTA and ACTION Education Programs of the proposed regional plan shall be based upon:

(a) The adequacy of the procedures to provide for systematic and open communication of volunteers' views regarding terms and conditions of their service; and

(b) The adequacy of the procedures to provide for effective and efficient resolution of volunteers' problems or concerns regarding terms and conditions of their service.

#### **§ 1218.6 Freedom to present views.**

The expression by a volunteer of his views with respect to the terms and conditions of his service shall not be construed as reflecting on a volunteer's standing, performance or desirability as a volunteer. ACTION intends that its programs be conducted in an atmosphere in which volunteers can speak freely, and frankly discuss problems. Nor shall a volunteer who represents such views be subjected to restraint, interference, coercion, discrimination or reprisal because of presentation of his views.

### **PART 1219—COMPETITIVE SERVICE ELIGIBILITY**

#### **Sec.**

§ 1219.1 Introduction.

§ 1219.2 Policy.

§ 1219.3 Procedure.

*Authority: Secs. 415(d) and 420 of Pub. L. 93–113, 87 Stat. 412 and 414.*

*[39 FR 42915, Dec. 9, 1974, unless otherwise noted]*

**§ 1219.1 Introduction.**

Section 415(d), Title IV, of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, 87 Stat. 412, provides that VISTA Volunteers who have successfully completed their period of service shall be eligible for appointment in the Federal competitive service in the same manner as Peace Corps Volunteers as prescribed in Executive Order No. 11103 (April 10, 1963). This section further provides that the Director of ACTION shall determine who has successfully completed his period of service in accordance with regulations he shall prescribe.

**§ 1219.2 Policy.**

Certificates of satisfactory service for the purpose of this order shall be issued only to persons who have completed at least one full year of service as a full-time Volunteer under part A of title I of the Domestic Volunteer Service Act of 1973 (or title VIII of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2991–2994d), and who have not been terminated for cause.

**§ 1219.3 Procedure.**

(a) The Deputy Associate Director for VISTA and Anti-Poverty Programs will ensure that each eligible VISTA Volunteer is promptly notified of his eligibility for competitive service, prior to the completion of his service.

(b) The Deputy Associate Director for VISTA and Anti-Poverty Programs (or his designee) shall, upon the request of a duly recognized representative of any agency in the Executive Branch, certify the VISTA Volunteer's service on ACTION Form A–507.

**PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES**

**Sec.**

**Subpart A—General**

§ 1220.1-1 Introduction.

**Subpart B—Criminal Proceedings**

§ 1220.2-1 Full-time volunteers.

§ 1220.2-2 Part-time volunteers.

§ 1220.2-3 Procedure.

**Subpart C—Civil and Administrative Proceedings**

§ 1220.3-1 Full-time volunteers.

§ 1220.3-2 Part-time volunteers.

§ 1220.3-3 Procedure.

*Authority: Secs. 419 and 420 of Pub. L. 93–113, 87 Stat. 413 and 414.*

*[40 FR 28800, July 9, 1975, unless otherwise noted]*

## **Subpart A—General**

### **§ 1220.1-1 Introduction.**

Section 419 of the Domestic Volunteer Service Act of 1973 (the Act), Pub. L. 93–113, 87 Stat. 413, authorizes the Director of ACTION to pay expenses incurred in judicial and administrative proceedings for the defense of full-time or part-time volunteers serving under the Act. These include counsel fees, court costs, bail or other expenses incidental to the volunteer's defense. For part-time volunteers, section 419 provides that the proceeding must arise directly out of the performance of activities pursuant to the Act.

## **Subpart B—Criminal Proceedings**

### **§ 1220.2-1 Full-time volunteers.**

(a)(1) ACTION will pay all reasonable expenses for defense of full-time volunteers up to and including arraignment in Federal, state, and local criminal proceedings, except in cases where it is clear that the charged offense results from conduct which is not related to his service as a volunteer.

(2) Situations where conduct is clearly unrelated to a volunteer's service are those that arise either:

(i) In a period prior to volunteer service,

(ii) Under circumstances where the volunteer is not at his assigned volunteer project location, such as during periods of administrative, vacation, or emergency leave, or

(iii) When he is at his volunteer station, but the activity or action giving rise to the charged offense is clearly not part of, or required by, such assignment.

(b) Reasonable expenses in criminal proceedings beyond arraignment may be paid in cases where:

(1) The charge against the volunteer relates to his assignment or status as a volunteer, and not his personal status or personal matters. A charge relating to a volunteer's assignment arises out of any activity or action which is a part of, or required by, such assignment. A charge relating to a volunteer's status is motivated exclusively by the fact that a defendant is a volunteer.

(2) The volunteer has not admitted a willful or knowing violation of law, and

(3) The charge(s) is not a minor misdemeanor, such as a minor vehicle violation for which a fine or bail forfeiture will not exceed \$100.

(c) Notwithstanding the foregoing, there may be situations in which the criminal proceeding results from a situation which could give rise to a civil claim under the Federal Tort Claims Act. In such situations, the Justice Department may agree to defend the volunteer. In those cases, unless there is a conflict between the volunteer's interest and that of the government, ACTION will not pay for additional private representation for the volunteer.

### **§ 1220.2-2 Part-time volunteers.**

(a) With respect to a part-time volunteer, ACTION will reimburse a sponsor for the reasonable expenses it incurs for the defense of the volunteer in Federal, state and local criminal proceedings, including arraignment, only under the following circumstances:

- (1) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;
  - (2) The volunteer receives, or is eligible to receive, compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses, under an ACTION grant project; and
  - (3) The conditions specified in paragraphs (b) (2) and (3) in §1220.2-1 are met.
- (b) In certain circumstances volunteers who are ineligible for reimbursement of legal expenses by ACTION may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

**§ 1220.2-3 Procedure.**

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment of bail to prevent incarceration or other serious consequences to the volunteer or the retention of an attorney prior to arraignment is necessary and is covered under §1220.2-1 or §1220.2-2, sponsors shall immediately notify the appropriate ACTION state office or if the state office cannot be reached, the appropriate regional office. The regional office shall provide each sponsor with a 24-hour telephone number.

(b) Immediately after notification of the appropriate office, and with the approval thereof, the sponsor shall advance up to \$500 for the payment of bail or such other legal expenses as are necessary prior to arraignment to prevent the volunteer from being incarcerated. In the event it is subsequently determined that ACTION or a sponsor is not responsible under this policy for the volunteer's defense, any such advance may be recovered directly from the volunteer or from allowances, stipends, or out-of-pocket expenses which are payable or become payable to the volunteer. In the case of a grassroots sponsor of full-time volunteers which is not able to provide the \$500 the ACTION state or regional office shall immediately make such sum available to the sponsor.

(c) Immediately upon receipt of notification from the sponsor, the state or regional office shall notify the General Counsel, giving all facts and circumstances at that time known to such office. Thereafter the office shall cooperate with the General Counsel in making an investigation of all surrounding facts and circumstances and shall provide such information immediately to the General Counsel.

(d) The General Counsel shall, upon notification by the state or regional office, determine the extent to which ACTION will provide funds for the volunteer's defense or reimburse a sponsor for funds it spends on the volunteer's behalf. Included in this responsibility shall be the negotiation of fees and approval of other costs and expenses. State and regional offices are not authorized to commit ACTION to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided above, without the express consent of the General Counsel. Additionally, the General Counsel shall, in cases arising directly out of the performance of authorized project activities, ascertain whether the services of the United States Attorney can be made available to the volunteer.

(e) The sponsor and the state and regional office shall have a continuing responsibility for cooperation and coordination with the Office of General Counsel during the pendency of any such litigation, and of notifying the General Counsel of any facts and circumstances which come to the attention of such office or the sponsor which affects such litigation.

**Subpart C—Civil and Administrative Proceedings**

**§ 1220.3-1 Full-time volunteers.**

ACTION will pay reasonable expenses incurred in the defense of full-time volunteers in Federal, state, and local civil judicial and administrative proceedings where:

(a) The complaint or charge against the volunteer is directly related to his volunteer service and not to his personal activities or obligations.

(b) The volunteer has not admitted willfully or knowingly pursuing a course of conduct which would result in the plaintiff or complainant initiating such a proceeding, and

(c) If the judgment sought involves a monetary award, the amount sought exceeds \$100.

**§ 1220.3-2 Part-time volunteers.**

ACTION will reimburse sponsors for the reasonable expenses incidental to the defense of part-time volunteers in Federal, state and local civil judicial and administrative proceedings where:

(a) The proceeding arises directly out of the volunteer's performance of activities pursuant to the Act;

(b) The volunteer receives or is eligible to receive compensation, including allowances, stipend, or reimbursement for out-of-pocket expenses under an ACTION grant; and

(c) The conditions specified in paragraphs (b) and (c) in §1220.3-1 are met.

**§ 1220.3-3 Procedure.**

Immediately upon the receipt by a volunteer of any court papers or administrative orders making him a part to any proceeding covered under §1220.3-1 or §1220.3-2, the volunteer shall immediately notify his sponsor who in turn shall notify the appropriate ACTION state office. The procedures referred to in §1220.2-3, paragraphs (c) through (e), shall thereafter be followed as appropriate.

**PART 1222—PARTICIPATION OF PROJECT BENEFICIARIES**

**Sec.**

§ 1222.1 Purpose.

§ 1222.2 Applicability.

§ 1222.3 Policy.

§ 1222.4 Advisory group responsibilities.

§ 1222.5 Advisory group expenses.

§ 1222.6 Sponsor's responsibilities.

*Authority: Secs. 106 and 420 of Pub. L. 93-113, 87 Stat. 398 and 414.*

*[40 FR 57217, Dec. 8, 1975, unless otherwise noted]*

**§ 1222.1 Purpose.**

The purpose of these regulations is to prescribe requirements for the establishment of a continuing mechanism for the meaningful participation of project beneficiaries in the planning, development, and implementation of project activities utilizing full-time volunteers authorized under Title I of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113. This policy specifically implements Section 106, Title I, Pub. L. 93-113.

**§ 1222.2 Applicability.**

These regulations apply to all full-time volunteer programs and projects under title I, Pub. L. 93–113, including grant programs. Included in these programs are VISTA (part A), University Year for ACTION (UYA) (part B), ACTION Cooperative Volunteers (ACV) and Program for Local Services (PLS) (part C).

**§ 1222.3 Policy.**

(a) Each potential project sponsor shall establish an advisory group for the project, to include substantial membership of potential project beneficiaries or, to the extent feasible, their democratically chosen representatives, prior to the submission of an application to ACTION for volunteers.

(b) The term “substantial” means, in this case, a sufficient number of appropriate persons to assure that the concerns and points of view of the potential project beneficiaries are adequately presented and considered in the deliberations of the group. The phrase “project beneficiaries” means, in this case, recipients of benefits accruing directly from project activities as conducted by ACTION Volunteers.

(c) Potential sponsoring organizations that have an established governing, policy, or advisory group whose membership is composed of at least 50% of members of the beneficiary population are not required to establish a separate project advisory group for the purposes of these regulations.

**§ 1222.4 Advisory group responsibilities.**

The advisory group shall have the following responsibilities for the intent and purposes of these requirements:

(a) To the extent practical, assist the sponsor in the initial planning of a new project proposal and in the planning of a continuation project application.

(b) To review and provide written comments concerning any project application prior to the submission of the application to ACTION. A copy of such comments shall accompany each application to ACTION.

(c) To meet with the sponsoring organization's staff at periodic intervals, but no less than twice per project year, for the purpose of reviewing and commenting on the development and implementation of the project. Such project review and commentary should be directed toward the adequacy of the project to meet the identified needs of the project beneficiaries.

(d) To submit, if it so chooses, written reports and/or copies of minutes of its meetings to the sponsor to accompany the Sponsor's Quarterly Program Report (A–568) submitted to the appropriate ACTION regional office.

**§ 1222.5 Advisory group expenses.**

As permitted by law, ACTION regional staff may pay for certain incidental out-of-pocket expenses incurred by the advisory group in connection with its responsibilities under §1222.4.

**§ 1222.6 Sponsor's responsibilities.**

The sponsor or potential sponsor shall furnish the following evidence of the advisory group's participation in the planning, development, and implementation of the project:

(a) Each new application to ACTION for volunteers shall contain a statement describing how the advisory group has participated in the planning of the project proposal. This statement shall be signed by an authorized representative of the Advisory group (see §1222.4–2). For continuation project applications, a written statement shall be included

which specifies how the advisory group complied with its responsibilities under §1222.4 of these regulations. This statement shall be signed by an authorized representative of the advisory group (see §1222.4–2 and 3).

(b) In each Sponsor's Quarterly Program Report (A–568), the sponsor shall include a brief statement describing the extent to which the advisory group was involved in the continuing development and implementation of the project.

## **PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE**

**Sec.**

### **Subpart A—General Provisions**

- § 1225.1 Purpose.**
- § 1225.2 Policy.**
- § 1225.3 Definitions.**
- § 1225.4 Coverage.**
- § 1225.5 Representation.**
- § 1225.6 Freedom from reprisal.**
- § 1225.7 Review of allegations of reprisal.**

### **Subpart B—Processing Individual Complaints of Discrimination**

- § 1225.8 Precomplaint procedure.**
- § 1225.9 Complaint procedure.**
- § 1225.10 Corrective action.**
- § 1225.11 Amount of attorney fees.**

### **Subpart C—Processing Class Complaints of Discrimination**

- § 1225.12 Precomplaint procedure.**
- § 1225.13 Acceptance, rejection or cancellation of complaint.**
- § 1225.14 Consolidation of complaints.**
- § 1225.15 Notification and opting out.**
- § 1225.16 Investigation and adjustment of complaint.**
- § 1225.17 Agency decision.**
- § 1225.18 Notification of class members of decision.**
- § 1225.19 Corrective action.**
- § 1225.20 Claim appeals.**
- § 1225.21 Statutory rights.**

*Authority: Secs. 417, 402(14), 420, Pub. L. 93–113, 87 Stat. 398, 407, and 414; Sec. 5(a), Pub. L. 87–293, 75 Stat. 613; Executive Order 12137, issued May 16, 1979.*

*[46 FR 1609, Jan. 6, 1981, unless otherwise noted]*

### **Subpart A—General Provisions**

#### **§ 1225.1 Purpose.**

The purpose of this part is to establish a procedure for the filing, investigation, and administrative determination of allegations of discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, which arise in connection with the recruitment, selection, placement, service, or termination of Peace Corps and ACTION applicants, trainees, and Volunteers for full-time service.

## § 1225.2 Policy.

It is the policy of Peace Corps and ACTION to provide equal opportunity in all its programs for all persons and to prohibit discrimination based on race, color, national origin, religion, age, sex, handicap or political affiliation, in the recruitment, selection, placement, service, and termination of Peace Corps and ACTION Volunteers. It is the policy of Peace Corps and ACTION upon determining that such prohibited discrimination has occurred, to take all necessary corrective action to remedy the discrimination, and to prevent its recurrence.

## § 1225.3 Definitions.

Unless the context requires otherwise, in this Part:

(a) *Director* means the Director of Peace Corps for all Peace Corps applicant, trainee, or Volunteer complaints processed under this part, or the Director of ACTION for all domestic applicant, trainee, or Volunteer complaints processed under this part. The term shall also refer to any designee of the respective Director.

(b) *EO Director* means the Director of the Equal Opportunity Division of the Office of Compliance, ACTION. The term shall also refer to any designee of the EO Director.

(c) *Illegal discrimination* means discrimination on the basis of race, color, national origin, religion, age, sex, handicap or political affiliation as defined in section 5(a) of the Peace Corps Act (22 U.S.C. 2504); section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000-16); Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791, et seq.); and the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.). Further clarification of the scope of matters covered by this definition may be obtained by referring to the following regulations: Sex Discrimination: 29 CFR part 1604; Religious Discrimination: 29 CFR part 1605; National Origin Discrimination: 29 CFR part 1606; Age Discrimination: 45 CFR part 90; Handicap Discrimination: 29 CFR 1613.701 through 1613.707.

(d) *Applicant* means a person who has submitted to the appropriate agency personnel a completed application required for consideration of eligibility for Peace Corps or ACTION volunteer service. "Applicant" may also mean a person who alleges that the actions of agency personnel precluded him or her from submitting such an application or any other information reasonably required by the appropriate personnel as necessary for a determination of the individual's eligibility for volunteer service.

(e) *Trainee* means a person who has accepted an invitation issued by Peace Corps or ACTION and has registered for Peace Corps or ACTION training.

(f) *Volunteer* means a person who has completed successfully all necessary training; met all clearance standards; has taken, if required, the oath prescribed in either section 5(j) of the Peace Corps Act (22 U.S.C. 2504), or section 104(c) of the Volunteer Service Act of 1973, as amended (42 U.S.C. 104(c)) and has been enrolled as a full-time Volunteer by the appropriate agency.

(g) *Complaint* means a written statement signed by the complainant and submitted to the EO Director. A complaint shall set forth specifically and in detail:

(1) A description of the Peace Corps or ACTION management policy or practice, if any, giving rise to the complaint;

(2) A detailed description including names and dates, if possible, of the actions of the Peace Corps or ACTION officials which resulted in the alleged illegal discrimination;

(3) The manner in which the Peace Corps or ACTION action directly affected the complainant; and

(4) The relief sought.

A complaint shall be deemed filed on the date it is received by the appropriate agency official. When a complaint does not conform with the above definition, it shall nevertheless be accepted. The complainant shall be notified of the steps necessary to correct the deficiencies of the complaint. The complainant shall have 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint.

(h) *Counselor* means an official designated by the EO Director to perform the functions of conciliation as detailed in this part.

(i) *Agent* means a class member who acts for the class during the processing of a class complaint. In order to be accepted as the agent for a class complaint, in addition to those requirements of a complaint found in §1225.3(g) of this part, the complaint must meet the requirements for a class complaint as found in subpart C of these regulations.

#### **§ 1225.4 Coverage.**

(a) These procedures apply to all Peace Corps or ACTION applicants, trainees, and Volunteers throughout their term of service with the Peace Corps or ACTION. When an applicant, trainee, or Volunteer makes a complaint which contains an allegation of illegal discrimination in connection with an action that would otherwise be processed under a grievance, early termination, or other administrative system of the agency, the allegation of illegal discrimination shall be processed under this part. At the discretion of the appropriate Director, any other issues raised may be consolidated with the discrimination complaint for processing under these regulations. Any issues which are not so consolidated shall continue to be processed under those procedures in which they were originally raised.

(b) The submission of class complaints alleging illegal discrimination as defined above will be handled in accordance with the procedure outlined in subpart C.

#### **§ 1225.5 Representation.**

Any aggrieved party may be represented and assisted in all stages of these procedures by an attorney or representative of his or her own choosing. An aggrieved party must immediately inform the agency if counsel is retained. Attorney fees or other appropriate relief may be awarded in the following circumstances:

(a) Informal adjustment of a complaint. An informal adjustment of a complaint may include an award of attorney fees or other relief deemed appropriate by the EO Director. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on their amount, this issue may be appealed to the appropriate Director to be determined in the manner detailed in §1225.11 of this part.

(b) Final Agency Decision. When discrimination is found, the appropriate Director shall advise the complainant that any request for attorney fees or costs must be documented and submitted for review within 20 calendar days after his or her receipt of the final agency decision. The amount of such awards shall be determined under §1225.11. In the unusual situation in which it is determined not to award attorney fees or other costs to a prevailing complainant, the appropriate Director in his or her final decision shall set forth the specific reasons thereof.

#### **§ 1225.6 Freedom from reprisal.**

Aggrieved parties, their representatives, and witnesses will be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage described in §1225.8 of this part, or any time thereafter.

#### **§ 1225.7 Review of allegations of reprisal.**

An aggrieved party, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this part, may, if covered by this part, request in writing that the allegation be reviewed as an individual complaint of discrimination subject to the procedures described in Subpart B or that the allegation be considered as an issue in the complaint at hand.

### **Subpart B—Processing Individual Complaints of Discrimination**

#### **§ 1225.8 Precomplaint procedure.**

(a) An aggrieved person who believes that he or she has been subject to illegal discrimination shall bring such allegations to the attention of the appropriate Counselor within 30 days of the alleged discrimination to attempt to resolve them. The process for notifying the appropriate Counselor is the following:

(1) Aggrieved applicants, trainees or Volunteers who have not departed for overseas assignments, or who have returned to Washington for any administrative reason shall direct their allegations to the EO Director for assignment to an appropriate Counselor.

(2) Aggrieved trainees or Volunteers overseas shall direct their allegations to the designated Counselor for that post.

(3) Aggrieved applicants, trainees, and Volunteers applying for, or enrolled in ACTION domestic programs shall direct their allegations to the designated Counselor for that Region.

(b) Upon receipt of the allegation, the Counselor or designee shall make whatever inquiry is deemed necessary into the facts alleged by the aggrieved party and shall counsel the aggrieved party for the purpose of attempting an informal resolution agreeable to all parties. The Counselor will keep a written record of his or her activities which will be submitted to the EO Director if a formal complaint concerning the matter is filed.

(c) If after such inquiry and counseling an informal resolution to the allegation is not reached, the Counselor shall notify the aggrieved party in writing of the right to file a complaint of discrimination with the EO Director within 15 calendar days of the aggrieved party's receipt of the notice.

(d) The Counselor shall not reveal the identity of the aggrieved party who has come to him or her for consultation, except when authorized to do so by the aggrieved party. However, the identity of the aggrieved party may be revealed once the agency has accepted a complaint of discrimination from the aggrieved party.

#### **§ 1225.9 Complaint procedure.**

(a) *EO Director.* (1) The EO Director must accept a complaint if the process set forth above has followed, and the complaint states a charge of illegal discrimination. The agency will extend the time limits set herein (a) when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or (b) the complainant shows that he or she was prevented by circumstances beyond his or her control from submitting the matter in a timely fashion, or (c) for other reasons considered sufficiently by the agency. At any time during the complaint procedure, the EO Director may cancel a complaint because of failure of the aggrieved party to prosecute the complaint. If the complaint is rejected for failure to meet one or more of the requirements set out in the procedure outlined in §1225.8 or is cancelled, the EO Director shall inform the aggrieved party in writing of this Final Agency Decision; that the Peace Corps or ACTION will take no further action; and of the right, to file a civil action as described in §1225.21 of this part.

(2) Upon acceptance of the complaint and receipt of the Counselor's report, the EO Director shall provide for the prompt investigation of the complaint. Whenever possible, the person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The investigation shall include a thorough review of the circumstances

under which the alleged discrimination occurred, and any other circumstances which may constitute, or appear to constitute discrimination against the complainant. The investigator shall compile an investigative file, which includes a summary of the investigation, recommended findings of fact and a recommended resolution of the complaint. The investigator shall forward the investigative file to the EO Director and shall provide the complainant with a copy.

(3) The EO Director shall review the complaint file including any additional statements provided by the complainant, make findings of fact, and shall offer an adjustment of the complaint if the facts support the complaint. If the proposed adjustment is agreeable to all parties, the terms of the adjustment shall be reduced to writing, signed by both parties, and made part of the complaint file. A copy of the terms of the adjustment shall be provided the complainant. If the proposed adjustment of the complaint is not acceptable to the complainant, or the EO Director determines that such an offer is inappropriate, the EO Director shall forward the complaint file with a written notification of the findings of facts, and his or her recommendation of the proposed disposition of the complaint to the appropriate Director. The aggrieved party shall receive a copy of the notification and recommendation and shall be advised of the right to appeal the recommended disposition to the appropriate Director. Within ten (10) calendar days of receipt of such notice, the complainant may submit his or her appeal of the recommended disposition to the appropriate Director.

(b) *Appeal to Director.* If no timely notice of appeal is received from the aggrieved party, the appropriate Director or designee may adopt the proposed disposition as the Final Agency Decision. If the aggrieved party appeals, the appropriate Director or designee, after review of the total complaint file, shall issue a decision to the aggrieved party. The decision of the appropriate Director shall be in writing, state the reasons underlying the decision, shall be the Final Agency Decision, shall inform the aggrieved party of the right to file a civil action as described in §1225.21 of this part, and, if appropriate, designate the procedure to be followed for the award of attorney fees or costs.

#### **§ 1225.10 Corrective action.**

When it has been determined by Final Agency Decision that the aggrieved party has been subjected to illegal discrimination, the following corrective actions may be taken:

(a) Selection as a Trainee for aggrieved parties found to have been denied selection based on prohibited discrimination.

(b) Reappointment to Volunteer service for aggrieved parties found to have been early-terminated as a result of prohibited discrimination. To the extent possible, a Volunteer will be placed in the same position previously held. However, reassignment to the specific country of prior service, or to the specific position previously held, is contingent on several programmatic considerations such as the continued availability of the position, or program in that country, and acceptance by the host country of such placement. If the same position is deemed to be no longer available, the aggrieved party will be offered a reassignment to a position in as similar circumstances to the position previously held, or to resign from service for reasons beyond his or her control. Such a reassignment may require both additional training and an additional two year commitment to volunteer service.

(c) Provision for reasonable attorney fees and other costs incurred by the aggrieved party.

(d) Such other relief as may be deemed appropriate by the Director of Peace Corps or ACTION.

#### **§ 1225.11 Amount of attorney fees.**

(a) When a decision of the agency provides for an award of attorney's fees or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees as appropriate, to the agency within 20 days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record

itemizing the attorney's charges for legal services. Both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative and the appropriate Director. Such agreement shall immediately be reduced to writing. If the complainant, the representative and the agency cannot reach an agreement on the amount of attorney's fees or costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the appropriate Director shall issue a decision determining the amount of attorney fees or costs within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(b) The amount of attorney's fees shall be made in accordance with the following standards: The time and labor required, the novelty and difficulty of the questions, the skills requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases.

### **Subpart C—Processing Class Complaints of Discrimination**

#### **§ 1225.12 Precomplaint procedure.**

An applicant, trainee or Volunteer who believes that he or she is among a group of present or former Peace Corps or ACTION Volunteers, trainees, or applicants for volunteer service who have been illegally discriminated against and who wants to be an agent for the class shall follow those precomplaint procedures outlined in §1225.8 of this part.

#### **§ 1225.13 Acceptance, rejection or cancellation of complaint.**

(a) Upon receipt of a class complaint, the Counselor's report, and any other information pertaining to timeliness or other relevant circumstances related to the complaint, the EO Director shall review the file to determine whether to accept or reject the complaint, or a portion thereof, for any of the following reasons:

- (1) It was not timely filed;
- (2) It consists of an allegation which is identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;
- (3) It is not within the purview of this subpart;
- (4) The agent failed to consult a Counselor in a timely manner;
- (5) It lacks specificity and detail;
- (6) It was not submitted in writing or was not signed by the agent;
- (7) It does not meet the following prerequisites.
  - (i) The class is so numerous that a consolidated complaint of the members of the class is impractical;
  - (ii) There are questions of fact common to the class;
  - (iii) The claims of the agent of the class are representative of the claims of the class;

(iv) The agent of the class, or his or her representative will fairly and adequately protect the interest of the class.

(b) If an allegation is not included in the Counselor's report, the EO Director shall afford the agent 15 calendar days to explain whether the matter was discussed and if not, why he or she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the EO Director may decide to reject the allegation. If the explanation is satisfactory, the EO Director may require further counseling of the agent.

(c) If an allegation lacks specificity and detail, or if it was not submitted in writing or not signed by the agent, the EO Director shall afford the agent 30 days from his or her receipt of notification of the complaint defects to resubmit an amended complaint. The EO Director may decide that the agency reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the EO Director must advise the agent how to proceed on an individual or class basis concerning these allegations.

(d) The EO Director may extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his or her representative, shows that he or she was not notified of the prescribed time limits and was not otherwise aware of them or that he or she was prevented by circumstances beyond his or her control from acting within the time limit.

(e) When appropriate, the EO Director may determine that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(f) The EO Director may cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after:

(1) The EO Director has provided the agent a written request, including notice of proposed cancellation, that he or she provide certain information or otherwise proceed with the complaint; and

(2) Within 30 days of his or her receipt of the request.

(g) An agent must be informed by the EO Director in a request under paragraph (b) or (c) of this section that his or her complaint may be rejected if the information is not provided.

#### **§ 1225.14 Consolidation of complaints.**

The EO Director may consolidate the complaint if it involves the same or sufficiently similar allegations as those contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency.

#### **§ 1225.15 Notification and opting out.**

(a) Upon acceptance of a class complaint, the agency, within 30 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain:

(1) The name of the agency or organizational segment thereof, its location and the date of acceptance of the complaint;

(2) A description of the issues accepted as part of the class complaint;

(3) An explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and

(4) An explanation of the binding nature of the final decision or resolution of the complaint.

**§ 1225.16 Investigation and adjustment of complaint.**

The complaint shall be processed promptly after it has been accepted. Once a class complaint has been accepted, the procedure outlined in §1225.9 of this part shall apply.

**§ 1225.17 Agency decision.**

(a) If an adjustment of the complaint cannot be made the procedures outlined in §1225.9 shall be followed by the EO Director except that any notice required to be sent to the aggrieved party shall be sent to the agent of the class or his or her representative.

(b) The Final Agency Decision on a class complaint shall be binding on all members of the class.

**§ 1225.18 Notification of class members of decision.**

Class members shall be notified by the agency of the final agency decision and corrective action, if any, using at the minimum, the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. Notice shall be given by the agency within ten (10) calendar days of the transmittal of its decision to the agent.

**§ 1225.19 Corrective action.**

(a) When discrimination is found, Peace Corps or ACTION must take appropriate action to eliminate or modify the policy or practice out of which such discrimination arose, and provide individual corrective action to the agent and other class members in accordance with §1225.10 of this part.

(b) When discrimination is found and a class member believes that but for that discrimination he or she would have been accepted as a Volunteer or received some other volunteer service benefit, the class member may file a written claim with the EO Director within thirty (30) calendar days of notification by the agency of its decision.

(c) The claim must include a specific, detailed statement showing that the claimant is a class member who was affected by an action or matter resulting from the discriminatory policy or practice which arose not more than 30 days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim within sixty (60) calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty (60) calendar days after the date it was received by the EO Director.

**§ 1225.20 Claim appeals.**

(a) If the EO Director and claimant do not agree that the claimant is a member of the class, or upon the relief to which the claimant is entitled, the EO Director shall refer the claim, with recommendations concerning it to the appropriate Director for Final Agency Decision and shall so notify the claimant. The class member may submit written evidence to the appropriate Director concerning his or her status as a member of the class. Such evidence must be submitted no later than ten (10) calendar days after receipt of referral.

(b) The appropriate Director shall decide the issue within thirty (30) days of the date of referral by the EO Director. The claimant shall be informed in writing of the decision and its basis and that it will be the Final Agency Decision on the issue.

**§ 1225.21 Statutory rights.**

(a) A Volunteer, trainee, or applicant is authorized to file a civil action in an appropriate U.S. District Court:

(1) Within thirty (30) calendar days of his or her receipt of notice of final action taken by the agency.

(2) After one hundred eighty (180) calendar days from the date of filing a complaint with the agency if there has been no final agency action.

(b) For those complaints alleging discrimination that occur outside the United States, the U.S. District Court for the District of Columbia shall be deemed the appropriate forum.

**PART 1226—PROHIBITIONS ON ELECTORAL AND LOBBYING ACTIVITIES**

**Sec.**

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*Authority: Secs. 403, 415(b), Pub. L. 93-113, 87 Stat. 408, 411-412.*

*Source: 46 FR 8522, Jan. 27, 1981, unless otherwise noted.*

**Subpart A—General Provisions**

**§ 1226.1 Purpose.**

This part implements provisions of the Domestic Volunteer Service Act, 1973, 87 Stat. 394, Pub. L. 93–113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or the involvement of agency programs and volunteers in electoral and lobbying activities. These regulations are designed to define and clarify the nature and scope of prohibited activities to ensure that programs under the Act and volunteer activities are conducted within the statutory bounds established by the Act. The penalties for violation of the regulations are also prescribed. The statutory source of the prohibitions upon electoral and lobbying activities is section 403 (a) and (b) of the Act. Rules applying to the Hatch Act (Title III of chapter 73, title 5, United States Code) to full time and certain part time volunteers, as required by section 415(b) of the Act, are also set forth herein.

### **§ 1226.2 Scope.**

This part applies, except where otherwise noted, to all full time and part time volunteers serving in a program authorized by the Act, including VISTA, Service Learning and the Older American Volunteer Programs. It also applies to employees of sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

### **§ 1226.3 Definitions.**

(a) The *Act* means the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113 (42 U.S.C. 4951 *et seq.*).

(b) *Assistance* means funds, volunteers or volunteer training, which is paid for from funds appropriated for the purpose of supporting activities under the Act, and includes locally provided funds required by law, regulation or policy as a local contribution to activities authorized by the Act.

(c) *Full time* when used in the context of volunteer service, means service of not less than 35 hours per week.

(d) *Part time* when used in the context of volunteer service, means service that is less than full time.

(e) *Recipient* or *sponsor organization* means any organization that receives assistance under the Act.

(f) *Volunteer* means an individual enrolled for service in a program or project that is authorized by or which receives assistance under the Act.

(g) *Legislative body* includes the United States Congress, State and Territorial Legislatures and locally elected or appointed bodies with the authority to enact laws.

(h) *Public office* includes any Federal, State, local elective, or party office.

(i) *Party office* means an elective position in a national, state or local organization or committees or convention of such organization, which has, as a principal purpose, support or opposition to candidates for public office.

(j) *Legislation* means bills, resolutions, amendments, nominations and other matters pending or proposed in a legislative body and includes any other matter which may be the subject of action by the legislative body.

### **Subpart B—Sponsoring Organization**

#### **§ 1226.4 General.**

Under section 403 of the Act, volunteer programs may not be conducted in a manner which supports or results in the identification of such programs with prohibited activities. This section prescribes the nature and extent of

involvement in such activity by an organization which would preclude the assignment of volunteers to the organization.

**§ 1226.5 Electoral, voter registration, and other activities.**

Volunteers or other assistance, in any program under the Act shall not be assigned or provided to an organization if a principal purpose or activity of the organization includes any of the following activities:

(a) *Electoral Activities.* Any activity designed to influence the outcome of elections to any public office, such as:

(1) Actively campaigning for or against or supporting candidates for public office;

(2) Raising, soliciting or collecting funds for candidates for public office;

(3) Preparing, distributing or providing funds for campaign literature for candidates, including leaflets pamphlets, and material designed for the print or electronic media;

(b) *Voter Registration Activities.* Any voter registration activity, such as

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) Disseminating official voter registration material.

(c) *Transportation to the Polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting or collecting funds for such activity.

(d) Any program sponsor which, subsequent to the receipt of any federal assistance under the Act, makes as one of its principal purposes or activities any of the activities described in §1226.5 hereof shall be subject to the suspension or termination of such assistance, as provided in 45 CFR part 1206.

**Subpart C—Volunteer Activities**

**§ 1226.6 General.**

(a) All volunteers, full and part time, are subject to the prohibitions on expenditure of federal funds for partisan and nonpartisan electoral activities, voter registration activities and transportation of voters to the polls, and efforts to influence the passage or defeat of legislation, as contained in section 403 of the Act.

(b) Full time volunteers, and certain part time volunteers as specified herein, are also subject to the restrictions in subchapter III, chapter 73 of title 5, United States Code, commonly referred to as the Hatch Act, as provided in section 415(b) of the Act.

**§ 1226.7 Scope.**

The provisions in this subpart are applicable to full time volunteers as defined in §1226.3(c), and to such part time volunteers as may be otherwise specified herein. Full time volunteers are deemed to be acting in their capacity as volunteers:

(a) When they are actually engaged in their volunteer assignments. VISTA volunteers and other full time volunteers who are required to serve without regard to regular working hours are presumed to be actually engaged in their volunteer assignments at all times, except during periods of authorized leave; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

**§ 1226.8 Prohibited activities.**

(a) *Electoral Activity.* Volunteers shall not engage in any activity which may, directly or indirectly, affect or influence the outcome of any election to public office. Volunteers are prohibited from engaging in activities such as:

(1) Any activity in support of, or in opposition to a candidate for election to public office in a partisan or nonpartisan election;

(2) Participating in the circulation of petitions, or the gathering of signatures on nominating petitions or similar documents for candidates for public office.

(3) Raising, soliciting, or collecting funds for a candidate for public office;

(4) Preparing, distributing or providing funds for campaign material for candidates, including leaflets, pamphlets, brochures and material designed for the print or electronic media;

(5) Organizing political meetings or forums;

(6) Canvassing voters on behalf of a candidate for public office;

(7) Raising, soliciting or collecting funds for groups that engage in any of the activities described in paragraphs (a) (1) through (6) of this section.

(b) *Voter Registration.* Volunteers shall not engage in any voter registration activity, including:

(1) Providing transportation of individuals to voter registration sites;

(2) Providing assistance to individuals in the process of registering to vote, including determinations of eligibility;

(3) The dissemination of official voter registration materials; or

(4) Raising, soliciting or collecting funds to support activities described in paragraphs (b) (1) through (3) of this section.

(c) *Transportation to the Polls.* Volunteers shall not engage in any activity to provide voters or prospective voters with transportation to the polls, nor shall they collect, raise, or solicit funds to support such activity, including securing vehicles for such activity.

(d) *Efforts to Influence Legislation.* Except as provided in §1226.9, volunteers shall not engage in any activity for the purpose of influencing the passage or defeat of legislation or any measures on the ballot at a general or special election. For example, volunteers shall not:

(1) Testify or appear before legislative bodies in regard to proposed or pending legislation;

(2) Make telephone calls, write letters, or otherwise contact legislators or legislative staff, concerning proposed or pending legislation for the purpose of influencing the passage or defeat of such legislation;

(3) Draft legislation;

(4) Prepare legislative testimony;

(5) Prepare letters to be mailed by third parties to members of legislative bodies concerning proposed or pending legislation;

(6) Prepare or distribute any form of material, including pamphlets, newspaper columns, and material designed for either the print or electronic media, which urges recipients to contact their legislator or otherwise seek passage or defeat of legislation;

(7) Raise, collect or solicit funds to support efforts to affect the passage or defeat of legislation;

(8) Engage in any of the activities set forth in paragraphs (d) (1) through (7) of this section for the purpose of influencing executive action in approving or vetoing legislation.

(9) Circulate petitions, gather signatures on petitions, or urge or organize others to do so, which seek to have measures placed on the ballot at a general or special election.

(10) Engage in any of the activities enumerated in paragraphs (d) (1) through (9) of this section in regard to the passage or defeat of any measure on the ballot in a general or special election.

#### **§ 1226.9 Exceptions.**

(a) A volunteer may draft, review, testify or make representations to a legislative body regarding a legislative measure upon request of the legislative body, a committee, or a member thereof, provided that:

(1) The request to draft, review, testify or make representations is in writing, addressed to the volunteer or the organization to which the volunteer is assigned or placed, and signed by a member or members of the legislative body.

(2) The request states the type of representation or assistance requested and the issue to be addressed.

(3) The volunteer or the program sponsor provides a copy of such request to the State Director.

(b) The volunteer may draft, review, testify, or make a written representation to a legislative body regarding an authorization or appropriation measure directly affecting the operation of the project or program to which he or she is assigned: *Provided:*

(1) The sponsor organization provides notification to the State Director on a quarterly basis of all activity occurring pursuant to this exception.

(2) The legislative measure relates to the funding of the project or program or affects the existence or basic structure of the project or program.

(c) Notwithstanding the foregoing exceptions, any activity by a volunteer pursuant to paragraph (b) (1) or (2) of this section shall be incidental to his or her regular work assignment.

**§ 1226.10 Hatch Act restrictions.**

(a) In addition to the prohibitions described above, full time volunteers are subject to the Hatch Act, subchapter III, of chapter 73, title 5, United States Code. Full time volunteers shall not, directly or indirectly, actively participate in political management or in political campaigns. All volunteers retain the right to vote as they choose and to express their personal opinions on political issues or candidates. Examples of prohibited activities, include, but are not limited to,

- (1) Candidacy for or service as a delegate or alternate to any political convention or service as an officer or employee thereof.
  - (2) Acting as an officer of a primary meeting or caucus, addressing, making motions, preparing or presenting resolutions, representing others, or otherwise taking part in such meetings or caucuses.
  - (3) Organizing or conducting a political meeting or rally on any political matter.
  - (4) Holding office as a precinct or ward leader or representative, or service on any committee of a political party. It is not necessary that the service of the volunteer itself be political in nature to fall within the prohibition.
  - (5) Organizing a political club, being an officer of such a club, being a member of any of its committees, or representing the members of a political club in meetings or conventions.
  - (6) Soliciting, collecting, receiving, disbursing or otherwise handling contributions made for political purposes.
  - (7) Selling or soliciting pledges for dinner tickets or other activities of political organizations or candidates, or for their benefit.
  - (8) Distributing campaign literature, badges, buttons, bumperstickers or posters.
  - (9) Publishing or being editorially connected with a newspaper or other publication generally known as partisan from a political standpoint.
  - (10) Writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or in opposition to any political party, candidate or faction.
  - (11) Soliciting votes, helping get out the vote, acting as a checker, watcher or challenger for any party or faction, transporting voters to or from the polls, or transporting candidates on canvassing or speaking tours.
  - (12) Participation in or organizing a political parade.
  - (13) Initiating nominating petitions or acting as a canvasser or witness on such petitions.
  - (14) Being a candidate for nomination or election to a National, State, or local office.
- (b) Hatch Act restrictions apply to full time volunteers at all times during their service, including off-duty hours, leave, holidays and vacations.

**§ 1226.11 Part time volunteers.**

(a) The provisions in this section are applicable to part time volunteers, as defined in §1226.3(d). There are two categories of part time volunteers:

(1) Those enrolled for periods of service of at least twenty (20) hours per week for not less than twenty-six (26) consecutive weeks, as authorized under title I, part C of the Act, and

(2) All other part time volunteers, including Senior Companions, Foster Grandparents and Retired Senior Volunteers.

(b) All part time volunteers are subject to the restrictions described in §1226.8 (a), (b), (c) and (d) and the exceptions in §1226.9:

(1) When they are engaged in their volunteer assignments, in training activities, or other related activities supported by ACTION funds, or

(2) Whenever they represent themselves as ACTION volunteers, or may reasonably be perceived by others to be performing as volunteers.

(c) The restrictions described in §1226.10, pertaining to the Hatch Act, are applicable to volunteers enrolled for periods of service of at least 20 hours per week for not less than 26 consecutive weeks, as authorized under title I, part C of the Act:

(1) At all times in any day on which they serve as volunteers, or when engaged in activities related to their volunteer assignments, such as training; or

(2) Whenever they represent themselves as volunteers or may reasonably be perceived by others to be performing as volunteers.

#### **Subpart D—Sponsor Employee Activities**

##### **§ 1226.12 Sponsor employees.**

Sponsor employees whose salaries or other compensation are paid, in whole or in part, with agency funds are subject to the restrictions described in §1226.8 (a), (b), (c) and (d) and the exceptions in §1226.9:

(a) Whenever they are engaged in an activity which is supported by ACTION funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives ACTION funds, or could reasonably be perceived by others as acting in such capacity.

##### **§ 1226.13 Obligations of sponsors.**

(a) It shall be the obligation of program sponsors to ensure that they:

(1) Fully understand the restrictions on volunteer activity set forth herein;

(2) Provide training to volunteers on the restrictions and ensure that all other training materials used in training volunteers are fully consistent with these restrictions;

(3) Monitor on a continuing basis the activity of volunteers for compliance with this provision;

(4) Report all violations, or questionable situations, immediately to the State Director.

(b) Failure of a sponsor to meet the requirements set forth in paragraph (a) of this section, or a violation of the rules contained herein by either the sponsor, the sponsor's employees subject to §1226.12 or the volunteers assigned to the sponsor, at any time during the course of the grant may be deemed to be a material failure to comply with the terms and conditions of the grant as that term is used in 45 CFR 1206.1 regarding suspension and termination of assistance or a violation of the Project Memorandum of Agreement, as applicable. The sponsor shall be subject to the procedures and penalties contained in 45 CFR 1206.1.

(c) Violation by a volunteer of any of the rules and regulations set forth herein may be cause for suspension or termination as set forth in 45 CFR 1213.5–5(2) or other disciplinary action.

## **PART 1230—NEW RESTRICTIONS ON LOBBYING**

**Sec.**

### **Subpart A—General**

- § 1230.100 Conditions on use of funds.**
- § 1230.105 Definitions.**
- § 1230.110 Certification and disclosure.**

### **Subpart B—Activities by Own Employees**

- § 1230.200 Agency and legislative liaison.**
- § 1230.205 Professional and technical services.**
- § 1230.210 Reporting.**

### **Subpart C—Activities by Other Than Own Employees**

- § 1230.300 Professional and technical services.**

### **Subpart D—Penalties and Enforcement**

- § 1230.400 Penalties.**
- § 1230.405 Penalty procedures.**
- § 1230.410 Enforcement.**

### **Subpart E—Exemptions**

- § 1230.500 Secretary of Defense.**

### **Subpart F—Agency Reports**

- § 1230.600 Semi-annual compilation.**
  - § 1230.605 Inspector General report.**
- Appendix A to Part 1230—Certification Regarding Lobbying  
Appendix B to Part 1230—Disclosure Form To Report Lobbying

*Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 93–113; 42 U.S.C. 4951, et seq.; 42 U.S.C. 5060.*

*[55 FR 6737, 6755, Feb. 26, 1990, unless otherwise noted. Cross reference]*

*See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.*

## Subpart A—General

### § 1230.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### § 1230.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

#### **§ 1230.110 Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

#### **Subpart B—Activities by Own Employees**

##### **§ 1230.200 Agency and legislative liaison.**

(a) The prohibition on the use of appropriated funds, in §1230.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

#### **§ 1230.205 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in §1230.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

#### **§ 1230.210 Reporting.**

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## **Subpart C—Activities by Other Than Own Employees**

### **§ 1230.300 Professional and technical services.**

(a) The prohibition on the use of appropriated funds, in §1230.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §1230.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

## **Subpart D—Penalties and Enforcement**

### **§ 1230.400 Penalties.**

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date.

An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

#### **§ 1230.405 Penalty procedures.**

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

#### **§ 1230.410 Enforcement.**

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

#### **Subpart E—Exemptions**

##### **§ 1230.500 Secretary of Defense.**

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

#### **Subpart F—Agency Reports**

##### **§ 1230.600 Semi-annual compilation.**

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on

Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

#### **§ 1230.605 Inspector General report.**

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

#### **Appendix A to Part 1230—Certification Regarding Lobbying**

##### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative

agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

*Statement for Loan Guarantees and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Appendix B to Part 1230—Disclosure Form To Report Lobbying**

APPENDIX B TO PART 1230—DISCLOSURE FORM TO REPORT LOBBYING

**DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
03-02-004

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Title _____, if known:  Congressional District, if known: _____			<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$ _____		
<b>10. a. Name and Address of Lobbying Entity</b> of individual, last name, first name, MIs:  <small>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</small>			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MIs)  <small>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</small>		
<b>11. Amount of Payment</b> (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		<b>12. Type of Payment</b> (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other: specify: _____			
<b>13. Form of Payment</b> (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  <small>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</small>			
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No					
<b>16. Information requested through this form is authorized by 31 U.S.C. section 1352. The disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the law where such information was made or omitted with. This disclosure is required pursuant to 31 U.S.C. 1352. The information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only</b>			Authorized for Local Reproduction Standard Form - 133		

#### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

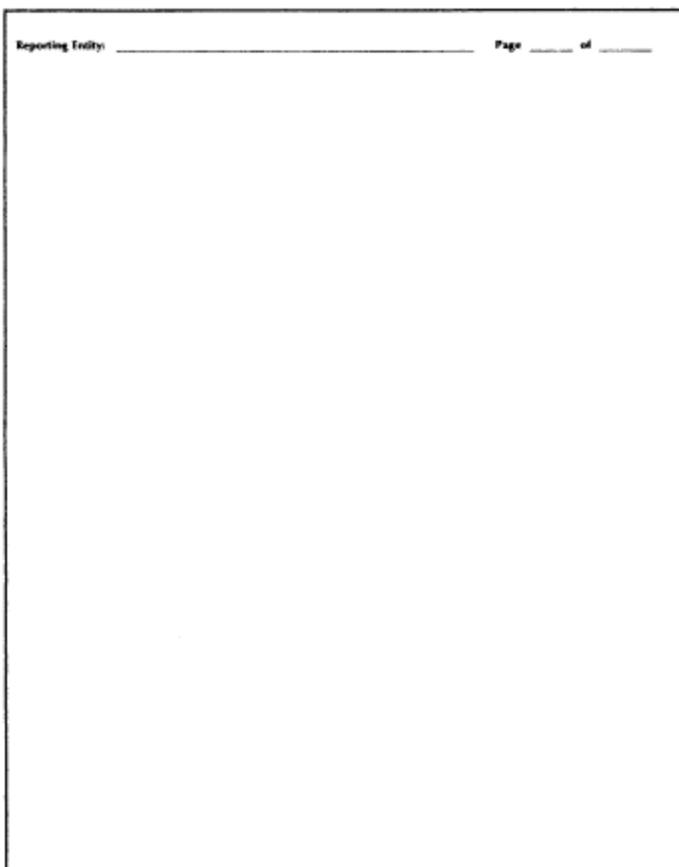
1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 7 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-02-90-601."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full name(s) of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the official(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0346-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0148-9046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_



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Standard Form - 111-4

**PART 1232—NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES  
RECEIVING FEDERAL FINANCIAL ASSISTANCE**

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*Authority:* 29 U.S.C. 794.

*[44 FR 31018, May 30, 1979, unless otherwise noted]*

#### Subpart A—General Provisions

##### § 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

##### § 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives such assistance, including, but not limited to VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87–293, as amended.

*[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]*

##### § 1232.3 Definitions.

As used in this part the term:

- (a) *The Act* means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95–602.
- (b) *Section 504* means section 504 of the Act.
- (c) *Director* means the Director of ACTION.
- (d) *Recipient* means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) *Applicant for assistance* means one who submits an application, request, or plan required to be approved by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) *Federal financial assistance* means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement which provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(4) A Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers under the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4951, Pub. L. 93-113, as amended.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Handicapped person*.

(1) *Handicapped person* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, except that as it relates to employment or volunteer service the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment or volunteer service, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) *Physical or mental impairment* means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(i) *Qualified handicapped person* means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(k) *Volunteer* and “Volunteer service” refers to any person serving as a full time or part-time volunteer as authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, as amended.

(l) *Work station* means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

(Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Sec. 402(14), Pub. L. 93–113, 87 Stat. 398)

[44 FR 31018, May 30, 1979; 46 FR 6951, Jan. 22, 1981, as amended at 68 FR 51388, Aug. 26, 2003]

**§ 1232.4 General prohibitions against discrimination.**

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in aid, benefits, or services that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from aid, benefits, or services limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program or activity receiving Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

#### **§ 1232.5 Assurances required.**

(a) An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Director, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a program or activity under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

#### **§ 1232.6 Notice.**

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of section 504 and this part.

#### **§ 1232.7 Remedial action, voluntary action and self-evaluation.**

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or

(ii) With respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred, or

(iii) With respect to handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

#### **§ 1232.8 Effect of state or local law.**

The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

### **Subpart B—Employment and Volunteer Service Practices**

#### **§ 1232.9 General prohibitions against employment and volunteer service discrimination.**

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment or volunteer service.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants, volunteers or employees, to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(f) Recipients operating a program or activity under which volunteers are assigned to work in a number of work stations will assure that a representative sample of work stations are accessible to handicapped persons.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

**§ 1232.10 Reasonable accommodation.**

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or volunteer unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include: (1) Making facilities used by employees or volunteers readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

#### **§ 1232.11 Employment and volunteer selection criteria.**

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

#### **§ 1232.12 Preemployment or pre-selection inquiries.**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §1232.8(b) or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or volunteer service to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided*, That:

(1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

### **Subpart C—Accessibility**

#### **§ 1232.13 General requirement concerning accessibility.**

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

[44 FR 31018, May 30, 1979]

#### **§ 1232.14 Existing facilities.**

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to comply with paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

[44 FR 31018, May 30, 1979, as amended at 68 FR 51388, Aug. 26, 2003]

#### **§ 1232.15 New construction.**

(a) *Design, construction, and alteration.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS

by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[44 FR 31018, May 30, 1979, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

## **Subpart D—Procedures**

### **§ 1232.16 Procedures.**

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§1203.6 through 1203.11 of this title.

## **PART 1233—INTERGOVERNMENTAL REVIEW OF ACTION PROGRAMS**

### **Section Contents**

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§ 1233.2 What definitions apply to these regulations?

§ 1233.3 What programs of the Agency are subject to these regulations?

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§ 1233.9 How does the Director receive and respond to comments?

§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?

§§ 1233.11-1233.12 [Reserved]

§ 1233.13 May the Director waive any provision of these regulations?

*Authority: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6505).*

*[48 FR 29284, June 24, 1983, unless otherwise noted]*

### **§ 1233.1 What is the purpose of these regulations?**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the Agency or its officers.

**§ 1233.2 What definitions apply to these regulations?**

*Agency* means ACTION, the National Volunteer Agency.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled “Intergovernmental Review of Federal Programs.”

*Director* means the Director of ACTION, or an official or employee of the Agency acting for the Director under a delegation of authority.

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

**§ 1233.3 What programs of the Agency are subject to these regulations?**

The Director publishes in the Federal Register a list of the Agency's programs that are subject to these regulations.

**§ 1233.4 [Reserved]**

**§ 1233.5 What is the Director's obligation with respect to federal interagency coordination?**

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and ACTION regarding programs covered under these regulations.

**§ 1233.6 What procedures apply to the selection of programs under these regulations?**

(a) A state may select any ACTION program published in the Federal Register in accordance with §1233.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Director of the Agency's programs selected for that process.

(c) A state may notify the Director of changes in its selections at any time. For each change, the state shall submit to the Director an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Director of changes in their program selections.

(d) The Director uses a state's process as soon as feasible, depending on individual programs, after the Director is notified of its selections.

**§ 1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?**

(a) The Director provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Agency. For those programs covered by a state process under §1233.6, the Director, to the extent permitted by law:

- (1) Uses the official state process to determine views of state and local elected officials; and,
  - (2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.
- (b) The Director provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:
- (1) The state has not adopted a process under the Order; or
  - (2) The assistance involves a program not selected for the state process.

This notice may be made by publication in the Federal Register, or other appropriate means, which the Agency in its discretion deems appropriate.

**§ 1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?**

- (a) Except in unusual circumstances, the Director gives state processes or directly affected state, areawide, regional and local officials and entities:
- (1) At least 30 days from the date established by the Director to comment on proposed federal financial assistance in the form of noncompeting continuation awards; and
  - (2) At least 60 days from the date established by the Director to comment on proposed federal financial assistance other than noncompeting continuation awards.
- (b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency have been delegated.

**§ 1233.9 How does the Director receive and respond to comments?**

- (a) The Director follows the procedures in §1233.10 if:
- (1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and
  - (2) That office or official transmits a state process recommendation for a program selected under §1233.6.
- (b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.
- (2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.
- (c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both.
- (d) If a program is not selected for a state process, state, areawide, regional and local officials and entities may submit comments either to the applicant or to the Agency, or both. In addition, if a state process recommendation for

a nonselected program is transmitted to the Agency by the single point of contact, the Director follows the procedures of §1233.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of §1233.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

**§ 1233.10 How does the Director make efforts to accommodate intergovernmental concerns?**

(a) If a state process provides a state process recommendation to the Agency through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the Agency's decision, in such form as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) The Agency will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purpose of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

**§§ 1233.11-1233.12 [Reserved]**

**§ 1233.13 May the Director waive any provision of these regulations?**

In an emergency, the Director may waive any provision of these regulations.

**PART 1235—LOCALLY GENERATED CONTRIBUTIONS IN OLDER AMERICAN VOLUNTEER PROGRAMS**

**Sec.**

**§ 1235.1 Definitions.**

**§ 1235.2 Implementation guidance.**

**§ 1235.3 Statement of policy.**

Appendix to Part 1235—Procedures To Resolve Questioned Costs

*Authority: 42 U.S.C. 5024; 42 U.S.C. 5060.*

*[56 FR 4732, Feb. 6, 1991, unless otherwise noted]*

### **§ 1235.1 Definitions.**

As used in this part and in section 224 of the Domestic Volunteer Service Act of 1973, as amended, the following definitions shall apply:

(a) *Director* means the Director of ACTION.

(b) *Locally Generated Contributions* means all contributions generated by the grantee in support of the grant, including non-ACTION Federal, State, local government and privately raised contributions.

(c) *Amount Required by the Director* means the proportion of the non-Federal contribution (including in-kind contributions) for a grant or contract made under the Domestic Volunteer Service Act of 1973, as amended, required by the Director in order to receive ACTION funds. This proportion is generally 10% for the Foster Grandparent Program/Senior Companion Program (FGP/SCP) and generally 10%, 20% and 30% for the Retired Senior Volunteer Program (RSVP) in the first, second, and subsequent years respectively. The “amount required by the Director” is also called the “local match.”

(d) *In Excess of the Amount Required by the Director* means of the total locally generated contributions, the amount over and above the percentage match (generally 10% for FGP/SCP and 10%, 20% and 30% for RSVP in the first, second, and subsequent years respectively) required by the Director of ACTION to be raised from non-ACTION sources to support the grant.

(e) *Inconsistent with the Provisions of This Act* means expenditures not in support of ACTION programs, as defined by the Domestic Volunteer Service Act of 1973, as amended. For example:

- (1) Inconsistency with the age threshold for volunteers for all Older American Volunteer Programs (OAVP);
- (2) Inconsistency with the low income test for the FGP and SCP programs;
- (3) Variations from the approved stipend levels for the FGP and SCP programs;
- (4) Inconsistency with the prohibition against political activity under all the OAVP programs; and/or
- (5) Unreasonable cost for a low-cost volunteer program.

### **§ 1235.2 Implementation guidance.**

ACTION's implementation of section 224 of the DVSA is based on fundamental principles regarding the Congressional intent of the Section as well as the Executive Branch's policy on Federal financial assistance to grantees. These principles include:

(a) That ACTION may not restrict grantees' use of excess contributions as long as those expenditures are “not inconsistent” with the Domestic Volunteer Service Act of 1973, as amended;

(b) That grantees are to fully account for and document expenditures of non-Federal contributions, regardless of whether they are used to meet ACTION's local match requirement or are in excess of the requirement; and

(c) That all expenditures in support of a Federal grant can be audited by the responsible Federal Agency or by independent auditors performing audits pursuant to OMB Circulars A-128 and A-133. Copies of OMB Circulars A-128 and A-133 are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

### § 1235.3 Statement of policy.

(a) Expenditures of locally generated non-Federal contributions required by the Director as matching funds must meet the requirements specified in ACTION's Grant Management and Program Operations Handbook, ACTION Order 2650.2, as amended, and the Domestic Volunteer Service Act of 1973, as amended. Copies of ACTION's Grants Management and Program Operations Handbook, ACTION Order 2650.2, as amended, are available at ACTION, 1100 Vermont Avenue, NW., Room 9200, Washington, DC 20525.

(b) All expenditures by the grantee of Federal and non-Federal funds (including expenditures from excess locally generated contributions) in support of the grant are subject to ACTION authorized audits.

(c) ACTION will not restrict the manner in which locally generated contributions in excess of the required match are expended if these expenditures are not inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

### Appendix to Part 1235—Procedures To Resolve Questioned Costs

I. Because implementation of section 224 may impact on how questioned costs are treated when raised in the context of an audit or program monitoring exercise, this appendix explains how questioned costs will be resolved. This part does not create any new auditing requirements.

II. All expenditures in support of a federal grant may be reviewed by an authorized audit or program monitoring review. Adequate financial records and supporting documentation must be maintained for both cash and in-kind contributions. (See ACTION's Grants Management Handbook for Grantees, ACTION Order 2650.2)

III. Three definitions are important to understand in relation to resolution of questioned costs:

(a) The term "questioned cost", pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, means an expenditure of grant funds that is questioned because of:

(1) An alleged violation of a provision of the Domestic Volunteer Service Act of 1973, as amended, or other law, regulation, or grant governing the expenditure of funds by the grantee;

(2) A finding that at the time of an audit or program review the cost is not supported by adequate documentation; or

(3) A finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

(b) The term "disallowed cost" means a questioned cost related to federal or local match expenditures that ACTION management, in a management decision, has sustained or agreed should not be charged to the Government.

(c) The term "program finding" means a questioned cost identified as from the grantee's excess locally generated contributions which is referred to ACTION program management for consideration.

IV. When costs are questioned from locally generated contributions, a distinction will be made between costs as part of the *local match* and costs as part of the *excess contribution*.

V. Normally, when expenditures of Federal or non-Federal local match funds are questioned, a management decision is made to either allow or disallow the costs. When an expenditure of excess locally generated funds is questioned, however, it will not be treated as a potential disallowed cost but identified as a program finding and referred to ACTION program management for resolution.

VI. Program findings may include, but are not limited to:

(a) Inadequate records to document the expenditures and provide assurance of the grantee's internal controls over the use of its cash and in-kind contributions; and

(b) Evidence that expenditures were made that are inconsistent with the Domestic Volunteer Service Act of 1973, as amended.

VII. Once program findings are determined by ACTION program management, decisions may be made to take corrective steps, including but not limited to:

(a) Requiring the grantee to adhere to stated program goals and objectives as a condition for future funding;

(b) Requiring the grantee to adopt a stronger financial management and control system.

Based on past experience, it is expected that corrective steps will be needed only in rare instances.

VIII. If the grantee has raised locally generated contributions in excess of the matching requirement and those expenditures are not questioned, and are consistent with the DVSA of 1973, as amended, for local match expenditures, they may be substituted for any disallowed portion of local match costs in order for the grantee to meet its matching requirement.