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CODE OF FEDERAL REGULATIONS

Title 45
Public Welfare

Part 1200 to End

Revised as of October 1, 2016

Containing a codification of documents
of general applicability and future effect

As of October 1, 2016

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

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An index to the text of ''Title 3—The President'' is carried within that volume.

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OLIVER A. POTTS,
Director,
Office of the Federal Register.
October 1, 2016.

THIS TITLE

Title 45—PUBLIC WELFARE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1–199, 200–499, 500–1199, and 1200 to end. Volume one (parts 1–199) contains all current regulations issued under subtitle A—Department of Health and Human Services. Volume two (parts 200–499) contains all current regulations issued under subtitle B—Regulations Relating to Public Welfare, chapter II—Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services, chapter III—Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services, and chapter IV—Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services. Volume three (parts 500–1199) contains all current regulations issued under chapter V—Foreign Claims Settlement Commission of the United States, Department of Justice, chapter VI—National Science Foundation, chapter VII—Commission on Civil Rights, chapter VIII—Office of Personnel Management, chapter IX—Denali Commission, chapter X—Office of Community Services, Administration for Children and Families, Department of Health and Human Services, and chapter XI—National Foundation on the Arts and the Humanities. Volume four (part 1200 to end) contains all current regulations issued under chapter XII—Corporation for National and Community Service, chapter XIII—Administration for Children and Families, Department of Health and Human Services, chapter XVI—Legal Services Corporation, chapter XVII—National Commission on Libraries and Information Science, chapter XVIII—Harry S Truman Scholarship Foundation, chapter XXI—Commission of Fine Arts, chapter XXIII—Arctic Research Commission, chapter XXIV—James Madison Memorial Fellowship Foundation, and chapter XXV—Corporation for National and Community Service. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of October 1, 2016.

For this volume, Susannah C. Hurley was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 45—Public Welfare

(This book contains part 1200 to end)

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

SOURCE: 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 pretrial, 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, 250 E Street SW., 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.

[63 FR 4598, Jan. 30, 1998, as amended at 81 FR 12600, Mar. 10, 2016]

§ 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

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APPENDIX A TO PART 1203—PROGRAMS TO WHICH THIS PART APPLIES

APPENDIX B TO PART 1203—PROGRAMS 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.

SOURCE: 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.
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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.

SOURCE: 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 grants of assistance provided by the Corporation for National and Community Service pursuant to sections of title II of the Domestic Volunteer Service Act of 1973, Public Law 93–113, 87 Stat. 413 (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.

[69 FR 19110, Apr. 12, 2004, as amended at 80 FR 63457, Oct. 20, 2015]

§ 1206.1–2 Application of this part.

This subpart applies to programs authorized under title II of the DVSA.

[80 FR 63457, Oct. 20, 2015]

§ 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 appropriate Service Center Director and any Corporation for National and Community Service (CNCS) Headquarters or State office official who is authorized to make the grant or 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 CNCS official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under title II of the DVSA in the form of grants or contracts involving Federal funds for the administration for which the Director of the National Senior Service Corps programs has responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received assistance under title 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 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 the development, conduct and administration of part of a project or program assisted under title II of the DVSA.

(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.

[69 FR 19110, Apr. 12, 2004, as amended at 80 FR 63457, Oct. 20, 2015]

§ 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 under title II of the DVSA. The procedures in the subpart do not apply to review of applications for sponsors who receive VISTA members under the DVSA.

[80 FR 63457, Oct. 20, 2015]

§ 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 supported in whole or in part with CNCS funds under the DVSA.

Program account includes assistance provided by CNCS to support a particular program activity; for example, 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.

[80 FR 63457, Oct. 20, 2015]

§ 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 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 may be similarly extended. No volunteers may be reenrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, CNCS 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.

[69 FR 19110, Apr. 12, 2004, as amended at 80 FR 63457, Oct. 20, 2015]

§ 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.

PARTS 1210–1211 [RESERVED]

PART 1212—VOLUNTEER AGENCIES PROCEDURES FOR NATIONAL GRANT VOLUNTEERS [RESERVED]

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

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AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 5057.

SOURCE: 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: 42 U.S.C. 5044(a).

SOURCE: 40 FR 16209, Apr. 10, 1975, unless otherwise noted.

§ 1216.1–1 Purpose.

This part establishes rules to assure that the services of volunteers in the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP), 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. This part implements section 404(a) of the Domestic Volunteer Service Act of 1973, Public Law 93–113 (the ''Act'').

[80 FR 63457, Oct. 20, 2015]

§ 1216.1–2 Applicability of this part.

(a) All volunteers in either the Foster Grandparent Program, the Senior Companion Program, or The Retired and Senior Volunteer Program (RSVP), who are 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.

[40 FR 16209, Apr. 10, 1975, as amended at 80 FR 63457, Oct. 20, 2015]

§ 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 1217–1219 [RESERVED]

PART 1220—PAYMENT OF VOLUNTEER LEGAL EXPENSES

Subpart A—General

Sec.

1220.1–1 Purpose.

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: 42 U.S.C. 5059.

SOURCE: 40 FR 28800, July 9, 1975, unless otherwise noted.

Subpart A—General

§1220.1–1 Purpose.

This part implements section 419 of the Domestic Volunteer Service Act of 1973, Public Law 93–113 (the ''Act''). This part provides rules to ensure that the Corporation for National and Community Service, which administers the three federal programs, the Foster Grandparent Program (FGP), the Senior Companion Program (SCP), and The Retired and Senior Volunteer Program (RSVP), pays the expenses incurred in

judicial and administrative proceedings for the defense of those volunteers serving in those programs. Payment of such expenses by CNCS for those volunteers include payment of counsel fees, court costs, bail or other expenses incidental to the volunteer's defense.

[80 FR 63458, Oct. 20, 2015]

Subpart B—Criminal Proceedings

§ 1220.2–1 Full-time volunteers.

(a)(1) The Corporation for National and Community Service will pay all reasonable expenses for defense of full-time volunteers up to and including the arraignment of 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, the Corporation for National and Community Service will not pay for additional private representation for the volunteer.

[40 FR 28800, July 9, 1975, as amended at 80 FR 63458, Oct. 20, 2015]

§ 1220.2–2 Part-time volunteers.

(a) With respect to a part-time volunteer, the Corporation for National and Community Service will reimburse a sponsor for the reasonable expense 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 a Corporation for National and Community Service 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 the Corporation for National and Community Service may be eligible for representation under the Criminal Justice Act (18 U.S.C. 3006A).

[40 FR 28800, July 9, 1975, as amended at 80 FR 63458, Oct. 20, 2015]

§ 1220.2–3 Procedure.

(a) Immediately upon the arrest of any volunteer under circumstances in which the payment or 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 Corporation for National and Community Service state office or if the state office cannot be reached, the appropriate Area Manager.

(b) Immediately after notification of the appropriate state 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 the Corporation for National and Community Service 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 that is not able to provide the $500, the Corporation for National and Community Service state office or Area Manager 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 office or Area Manager, determine the extent to which the Corporation for National and Community Service 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 offices and Area Managers are not authorized to commit the Corporation for National and Community Service to the payment of volunteers' legal expenses or to reimburse a sponsor except as provided in this section, 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.

[40 FR 28800, July 9, 1975, as amended at 80 FR 63458, Oct. 20, 2015]

Subpart C—Civil and Administrative Proceedings

§ 1220.3–1 Full-time volunteers.

The Corporation for National and Community Service 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.

[40 FR 28800, July 9, 1975, as amended at 80 FR 63458, Oct. 20, 2015]

§ 1220.3–2 Part-time volunteers.

The Corporation for National and Community Service 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 the

Corporation for National and Community Service grant; and

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

[80 FR 63458, Oct. 20, 2015]

§1220.3–3 Procedure.

Immediately upon the receipt by a volunteer of any court papers or administrative orders making a party 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 Corporation for National and Community Service state office. The procedures referred to in §1220.2–3(c) through (e) shall thereafter be followed as appropriate.

[80 FR 63459, Oct. 20, 2015]

PART 1222 [RESERVED]

PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Subpart A—General Provisions

Sec.
1225.1 Purpose.
1225.2 Policy.
1225.3 Definitions.
1225.4 Coverage.
1225.5 Representation.
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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.

SOURCE: 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 dicrimination 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

Subpart A—General Provisions

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1226.1 Purpose.
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Subpart B—Sponsoring Organization

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Subpart D—Sponsor Employee Activities

1226.10 Sponsor employees.
1226.11 Obligation of sponsors.

AUTHORITY: 42 U.S.C. 5043.

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

Subpart A—General Provisions

§ 1226.1 Purpose.

This part implements sections 403(a) and (b) of the Domestic Volunteer Service Act of 1973, Public Law 93–113, as amended, hereinafter referred to as the Act, pertaining to the prohibited use of Federal funds or involvement by certain Corporation for National and Community Service programs and volunteers in electoral and lobbying activities. This part implements those provisions of the Act, as they apply to agency programs and volunteers authorized under title II of the Act.

[80 FR 63459, Oct. 20, 2015]

§ 1226.2 Scope.

This part applies to all volunteers serving in a program authorized by title II of the Act, including the Foster Grandparent Program, the Senior Companion Program, and The Retired and Senior Volunteer Program (RSVP). This part also applies to employees or sponsoring organizations, whose salaries, or other compensation, are paid, in whole or in part, with agency funds.

[80 FR 63459, Oct. 20, 2015]

§ 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 described 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; or

(b) Whenever they represent themselves, or may reasonably be perceived by others, to be performing as a volunteer.

[46 FR 8522, Jan. 27, 1981, as amended at 80 FR 63459, Oct. 20, 2015]

§ 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.

Subpart D—Sponsor Employee Activities

§ 1226.10 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 and the exceptions in § 1226.9:

(a) Whenever they are engaged in an activity which is supported by Corporation for National and Community Service funds; or

(b) Whenever they identify themselves as acting in their capacity as an official of a project which receives Corporation for National and Community Service funds, or could reasonably be perceived by others as acting in such capacity.

[46 FR 8522, Jan. 27, 1981. Redesignated and revised at 80 FR 63459, Oct. 20, 2015]

§ 1226.11 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.

[46 FR 8522, Jan. 27, 1981. Redesignated at 80 FR 63459, Oct. 20, 2015]

PART 1230—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

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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.

SOURCE: 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 ageement 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 perfessional 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 $18,936 and not more than $189,361 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 $18,936 and not more than $189,361 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 $18,936, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $18,936 and $189,361, 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.

[55 FR 6737, 6755, Feb. 26, 1990, as amended at 81 FR 40820, June 23, 2016]

§ 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 $18,936 and not more than $189,361 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 $18,936 and not more than $189,361 for each such failure.

[55 FR 6737, 6755, Feb. 26, 1990, as amended at 81 FR 40820, June 23, 2016]

APPENDIX B TO PART 1230—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

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:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This 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.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

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 1 (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-DE-90-001."

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 names 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 officer(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.

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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.

SOURCE: 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 contractural 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 preemployment 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

Sec.

1233.1 What is the purpose of these regulations?
1233.2 What definitions apply to these regulations?
1233.3 What programs of the Agency are subject to these regulations?
1233.4 [Reserved]
1233.5 What is the Director's obligation with respect to federal interagency coordination?
1233.6 What procedures apply to the selection of programs under these regulations?
1233.7 How does the Director communicate with state and local officials concerning the Agency's programs?
1233.8 How does the Director provide states an opportunity to comment on proposed federal financial assistance?
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).

SOURCE: 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 prodecures 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.

AUTHORITY: 42 U.S.C. 5024; 42 U.S.C. 5060.

SOURCE: 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

[56 FR 4732, Feb. 6, 1991, as amended at 79 FR 76077, Dec. 19, 2014]

§ 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.

PARTS 1236–1299 [RESERVED]

CHAPTER XIII—ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN AND FAMILIES, HEAD START PROGRAM (Rev. eff. 11–7–16)

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SUBCHAPTERS J–K [RESERVED]

SUBCHAPTER A—OFFICE OF HUMAN DEVELOPMENT SERVICES, GENERAL PROVISIONS [RESERVED]
SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN AND FAMILIES, HEAD START PROGRAM (Rev. effective 11-7-16)

PART 1300 [RESERVED]

PART 1301—HEAD START GRANTS ADMINISTRATION

Subpart A—General

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1301.2 Definitions.

Subpart B—General Requirements

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1301.20 Matching requirements.
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1301.32 Limitations on costs of development and administration of a Head Start program.
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1301.34 Grantee appeals.

AUTHORITY: 42 U.S.C. 9801 *et seq*.

SOURCE: 44 FR 24061, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1301.1 Purpose and scope.

This part establishes regulations applicable to program administration and grants management for all grants under the Act, including grants for technical assistance and training and grants for research, demonstration, and pilot projects.

§ 1301.2 Definitions.

For the purposes of this part, unless the context requires otherwise:

Act means title V of the Economic Opportunity Act of 1964, as amended.

Budget period means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Community means a city, county, a multi-city or multi-county unit within a state, an Indian reservation, or any neighborhood or other geographic area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

Delegate agency means a public or private non-profit organization or agency to which a grantee has delegated all or part of its responsibility for operating a Head Start program.

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Head Start Agency or ''grantee'' means a local public or private nonprofit agency designated to operate a Head Start program by the responsible HHS official, in accordance with part 1302 of this chapter.

Head Start program means a program, funded under the Act and carried out by a Head Start agency or a delegate agency, that provides ongoing comprehensive child development services.

Independent auditor means an individual accountant or an accounting

firm, public or private agency, association, corporation, or partnership, that is sufficiently independent of the agency being audited to render objective and unbiased opinions, conclusions, and judgments.

Indirect costs mean those costs of a Head Start agency, as approved by the cognizant agency, the agency which has authority to set the grantee's indirect cost rate, which are not readily identifiable with a particular project or program but nevertheless are necessary to the general operation of the agency and the conduct of its activities.

Major disaster means any natural disaster or catastrophe which is of such severity and magnitude as to directly affect the capability of the Head Start agency of agencies providing Head Start programs to the damaged community to continue the programs without an increase in the Federal share above 80 percent.

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration on Children, Youth and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the Federal share plus any approved non-Federal share, including non-Federal share above the statutory minimum.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

Subpart B—General Requirements

§ 1301.10 General.

(a) Except as specified in paragraph (b) of this section, the following HHS regulations shall apply to all grants made under the Act:

45 CFR part 16 Department grant appeals process (except as provided in § 1301.34)
45 CFR part 46 Protection of Human Subjects
45 CFR part 75 Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards
45 CFR part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81 Practice and procedure for hearings under part 80
45 CFR part 84 Nondiscrimination on the basis of handicap in Federally assisted programs.

(b) 45 CFR part 75 is superseded as follows:

(1) Section 1301.11 of this subpart supersedes § 75.334 of part 75 with respect to insurance and bonding of private, non-profit Head Start agencies; and

(2) Section 1301.12 of this subpart supersedes subpart F of part 75 with respect to audit requirements for all Head Start agencies.

[44 FR 24061, Apr. 24, 1979, as amended at 81 FR 3021, Jan. 20, 2016]

§ 1301.11 Insurance and bonding.

(a) Private nonprofit Head Start agencies and their delegate agencies shall carry reasonable amounts of student accident insurance, liability insurance for accidents of their premises, and transportation liability insurance.

(b) Private nonprofit Head Start and delegate agencies shall make arrangements for bonding officials and employees authorized to disburse program funds.

§ 1301.12 Annual audit of Head Start programs.

(a) An audit of the Head Start program covering the prior budget period of each Head Start agency and its delegate agencies, if any, shall be made by an independent auditor to determine:

(1) Whether the agency's financial statements are accurate;

(2) Whether the agency is complying with the terms and conditions of the grant; and

(3) Whether appropriate financial and administrative procedures and controls have been installed and are operating effectively. Head Start agencies shall either include delegate agency audits as a part of their own audits or provide

for separate independent audits of their delegate agencies.

(b) Upon a written request showing necessity, the responsible HHS official may approve a period other than the prior budget period to be covered by the annual audit.

(c) Unless otherwise approved by the responsible HHS official, the report of the audit shall be submitted to the responsible HHS official, in the manner and form prescribed by him or her, within 4 months after the prior budget period.

§ 1301.13 Accounting system certification.

(a) Upon request by the responsible HHS official, each Head Start agency or its delegate agency shall submit an accounting system certification, prepared by an independent auditor, stating that the accounting system or systems established by the Head Start agency, or its delegate, has appropriate internal controls for safeguarding assets, checking the accuracy and reliability of accounting data, and promoting operating efficiency.

(b) A Head Start agency shall not delegate any of its Head Start program responsibilities to a delegate agency prior to receiving a certification that the delegate agency's accounting system meets the requirements specified in paragraph (a) of this section.

Subpart C—Federal Financial Assistance

§ 1301.20 Matching requirements.

(a) Federal financial assistance granted under the act for a Head Start program shall not exceed 80 percent of the total costs of the program, unless:

(1) An amount in excess of that percentage is approved under section 1301.21; or

(2) The Head Start agency received Federal financial assistance in excess of 80 percent for any budget period falling within fiscal year 1973 or fiscal year 1974. Under the circumstances described in clause

(3) Of the preceding sentence, the agency is entitled to receive the same percentage of Federal financial assistance that it received during such budget periods.

(b) The non-Federal share will not be required to exceed 20 percent of the total costs of the program.

(c) Federal financial assistance awarded to Head Start grantees for training and technical assistance activities shall be included in the Federal share in determining the total approved costs of the program. Such financial assistance is, therefore, subject to the 20 percent non-Federal matching requirement of this subpart.

[44 FR 24061, Apr. 24, 1979, as amended at 57 FR 41884, Sept. 14, 1992]

§ 1301.21 Criteria for increase in Federal financial assistance.

The responsible HHS official, on the basis of a written application and any supporting evidence he or she may require, will approve financial assistance in excess of 80 percent if he or she concludes that the Head Start agency has made a reasonable effort to meet its required non-Federal share but is unable to do so; and the Head Start agency is located in a county:

(a) That has a personal per capita income of less that $3,000 per year; or

(b) That has been involved in a major disaster.

Subpart D—Personnel and General Administration

§ 1301.30 General requirements.

Head Start agencies and delegate agencies shall conduct the Head Start program in an effective and efficient manner, free of political bias or family favoritism. Each agency shall also provide reasonable public access to information and to the agency's records pertaining to the Head Start program.

§ 1301.31 Personnel policies.

(a) *Written policies.* Grantee and delegate agencies must establish and implement written personnel policies for staff, that are approved by the Policy Council or Policy Committee and that are made available to all grantee and delegate agency staff. At a minimum, such policies must include:

(1) Descriptions of each staff position, addressing, as appropriate, roles

and responsibilities, relevant qualifications, salary range, and employee benefits (see 45 CFR 1304.52(c) and (d));

(2) A description of the procedures for recruitment, selection and termination (see paragraph (b) of this Section, Staff recruitment and selection procedures);

(3) Standards of conduct (see 45 CFR 1304.52(h));

(4) Descriptions of methods for providing staff and volunteers with opportunities for training, development, and advancement (see 45 CFR 1304.52(k), Training and development);

(5) A description of the procedures for conducting staff performance appraisals (see 45 CFR 1304.52(i), Staff performance appraisals);

(6) Assurances that the program is an equal opportunity employer and does not discriminate on the basis of gender, race, ethnicity, religion or disability; and

(7) A description of employee-management relation procedures, including those for managing employee grievances and adverse actions.

(b) *Staff recruitment and selection procedures.* (1) Before an employee is hired, grantee or delegate agencies must conduct:

(i) An interview with the applicant;

(ii) A verification of personal and employment references; and

(iii) A State or national criminal record check, as required by State law or administrative requirement. If it is not feasible to obtain a criminal record check prior to hiring, an employee must not be considered permanent until such a check has been completed.

(2) Grantee and delegate agencies must require that all current and prospective employees sign a declaration prior to employment that lists:

(i) All pending and prior criminal arrests and charges related to child sexual abuse and their disposition;

(ii) Convictions related to other forms of child abuse and neglect; and

(iii) All convictions of violent felonies.

(3) Grantee and delegate agencies must review each application for employment individually in order to assess the relevancy of an arrest, a pending criminal charge, or a conviction.

(c) *Declaration exclusions.* The declaration required by paragraph (b)(2) of this section may exclude:

(1) Traffic fines of $200.00 or less;

(2) Any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(3) Any conviction the record of which has been expunged under Federal or State law; and

(4) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) *Probationary period.* The policies governing the recruitment and selection of staff must provide for a probationary period for all new employees that allows time to monitor employee performance and to examine and act on the results of the criminal record checks discussed in paragraph (b) (1) of this Section.

(e) *Reporting child abuse or sexual abuse.* Grantee and delegate agencies must develop a plan for responding to suspected or known child abuse or sexual abuse as defined in 45 CFR 1340.2(d) whether it occurs inside or outside of the program.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (b).)

[61 FR 57225, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1301.32 Limitations on costs of development and administration of a Head Start program.

(a) *General provisions.* (1) Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS official grants a waiver approving a higher percentage for a specific period of time not to exceed twelve months.

(2) The limit of 15 percent for development and administrative costs is a maximum. In cases where the costs for development and administration are at or below 15 percent, but are judged by

the responsible HHS official to be excessive, the grantee must eliminate excessive development and administrative costs.

(b) *Development and administrative costs.* (1) Costs classified as development and administrative costs are those costs related to the overall management of the program. These costs can be in both the personnel and non-personnel categories.

(2) Grantees must charge the costs of organization-wide management functions as development and administrative costs. These functions include planning, coordination and direction; budgeting, accounting, and auditing; and management of purchasing, property, payroll and personnel.

(3) Development and administrative costs include, but are not limited to, the salaries of the executive director, personnel officer, fiscal officer/bookkeeper, purchasing officer, payroll/insurance/property clerk, janitor for administrative office space, and costs associated with volunteers carrying out administrative functions.

(4) Other development and administrative costs include expenses related to administrative staff functions such as the costs allocated to fringe benefits, travel, per diem, transportation and training.

(5) Development and administrative costs include expenses related to bookkeeping and payroll services, audits, and bonding; and, to the extent they support development and administrative functions and activities, the costs of insurance, supplies, copy machines, postage, and utilities, and occupying, operating and maintaining space.

(c) *Program costs.* Program costs include, but are not limited to:

(1) Personnel and non-personnel costs directly related to the provision of program component services and component training and transportation for staff, parents and volunteers;

(2) Costs of functions directly associated with the delivery of program component services through the direction, coordination or implementation of a specific component;

(3) Costs of the salaries of program component coordinators and component staff, janitorial and transportation staff involved in program component efforts, and the costs associated with parent involvement and component volunteer services; and

(4) Expenses related to program staff functions, such as the allocable costs of fringe benefits, travel, per diem and transportation, training, food, center/classroom supplies and equipment, parent activities funds, insurance, and the occupation, operation and maintenance of program component space, including utilities.

(d) *Dual benefit costs.* (1) Some costs benefit both the program components as well as development and administrative functions within the Head Start program. In such cases, grantees must identify and allocate appropriately the portion of the costs that are for development and administration.

(2) Dual benefit costs include, but are not limited to, salaries, benefits and other costs (such as travel, per diem, and training costs) of staff who perform both program and development and administrative functions. Grantees must determine and allocate appropriately the part of these costs dedicated to development and administration.

(3) Space costs, and costs related to space, such as utilities, are frequently dual benefit costs. The grantee must determine and allocate appropriately the amount or percentage of space dedicated to development and administration.

(e) *Relationship between development and administrative costs and indirect costs.* (1) Grantees must categorize costs in a Head Start program as development and administrative or program costs. These categorizations are separate from the decision to charge such costs directly or indirectly.

(2) Grantees must charge all costs, whether program or development and administrative, either directly to the project or as part of an indirect cost pool.

(f) *Requirements for compliance.* (1) Head Start grantees must calculate the percentage of their total approved costs allocated to development and administration as a part of their budget submission for initial funding, refunding or for a request for supplemental assistance in connection with a Head Start program. These costs may be a

part of the direct or the indirect cost pool.

(2) The Head Start grant applicant shall delineate all development and administrative costs in its application.

(3) Indirect costs which are categorized as program costs must be fully explained in the application.

(g) *Waiver.* (1) The responsible HHS official may grant a waiver of the 15 percent limitation on development and administrative costs and approve a higher percentage for a specific period of time not to exceed twelve months. The conditions under which a waiver will be considered are listed below and encompass those situations under which development and administrative costs are being incurred, but the provision of actual services has not begun or has been suspended. A waiver may be granted when:

(i) A new Head Start grantee or delegate agency is being established or services are being expanded by an existing Head Start grantee or delegate agency, and the delivery of component services to children and families is delayed until all program development and planning is well underway or completed; or

(ii) Component services are disrupted in an existing Head Start program due to circumstances not under the control of the grantee.

(2) A Head Start grantee that estimates that the cost of development and administration will exceed 15 percent of total approved costs must submit a request for a waiver that explains the reasons for exceeding the limitation. This must be done as soon as the grantee determines that it cannot comply with the 15 percent limit, regardless of where the grantee is within the grant funding cycle.

(3) The request for the waiver must include the period of time for which the waiver is requested. It must also describe the action the grantee will take to reduce its development and administrative costs so that the grantee will be able to assure that these costs will not exceed 15 percent of the total approved costs of the program after the completion of the waiver period.

(4) If granted, the waiver and the period of time for which it will be granted will be indicated on the Financial Assistance Award.

(5) If a waiver requested as a part of a grant application for funding or refunding is not approved, no Financial Assistance Award will be awarded to the Head Start program until the grantee resubmits a revised budget that complies with the 15 percent limitation.

(Information collection requirements contained in paragraphs (f) (2) and (3) of this section were approved on January 26, 1993, by the Office of Management and Budget under Control Number 0980–1043).

[57 FR 41885, Sept. 14, 1992, as amended at 58 FR 26918, May 6, 1993]

§ 1301.33 Delegation of program operations.

Federal financial assistance is not available for program operations where such operations have been delegated to a delegate agency by a Head Start agency unless the delegation of program operations is made by a written agreement and has been approved by the responsible HHS official before the delegation is made.

§ 1301.34 Grantee appeals.

An agency receiving a grant under the Act for technical assistance and training, or for a research, demonstration, or pilot project may appeal adverse decisions in accordance with part 16 of this title. Head Start agencies are also subject to the appeal procedures in part 16 except appeals by those agencies for suspension, termination and denial of refunding are subject to part 1303 of this title.

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

Subpart A—General

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1302.3 Consultation with public officials and consumers.
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Subpart D—Replacement of Indian Tribal Grantees

1302.30 Procedure for identification of alternative agency.
1302.31 Requirements of alternative agency.
1302.32 Alternative agency—prohibition.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 44 FR 24062, Apr. 24, 1979, unless otherwise noted.

Subpart A—General

§ 1302.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the selection, initial funding and refunding of Head Start grantees and for the selection of replacement grantees in the event of the voluntary or involuntary termination, or denial of refunding, of Head Start programs. It particularly provides for consideration of the need for selection of a replacement grantee where the continuing eligibility (legal status) and fiscal capability (financial viability) of a grantee to operate a Head Start program is cast in doubt by the cessation of funding under section 519 of the Act or by the occurrence of some other major change. It is intended that Head Start programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grantees be fully protected.

§ 1302.2 Definitions.

As used in this part—

Act means Title V of The Economic Opportunity Act of 1964, as amended.

Approvable application means an application for a Head Start program, either as an initial application or as an application to amend an approved application governing an on-going Head Start program, which, in addition to showing that the applicant has legal status and financial viability, provides for comprehensive services for children and families and for effective and responsible administration which are in conformity with the Act and applicable regulations, the Head Start Manual and Head Start policies.

Community action agency means a public or private nonprofit agency or organization designated as a community action agency by the Director of the Community Services Administration pursuant to section 210(a) or section 210(d) of the Act.

Community action program means a program operated by a community action agency.

Financial viability means the capability of an applicant or the continuing capability of a grantee to furnish the non-Federal share of the cost of operating an approvable or approved Head Start program.

Head Start grantee or *grantee* means a public or private nonprofit agency or organization whose application to operate a Head Start program pursuant to section 514 of the Act has been approved by the responsible HHS official.

Indian tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Legal status means the existence of an applicant or grantee as a public agency or organization under the law of the State in which it is located, or existence as a private nonprofit agency or organization as a legal entity recognized under the law of the State in

which it is located. Existence as a private non-profit agency or organization may be established under applicable State or Federal law.

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

[44 FR 24062, Apr. 24, 1979, as amended at 63 FR 34329, June 24, 1998]

§ 1302.3 Consultation with public officials and consumers.

Responsible HHS officials will consult with Governors, or their representatives, appropriate local general purpose government officials, and Head Start Policy Council and other appropriate representatives of communities to be served on the proposed replacement of Head Start grantees.

§ 1302.4 Transfer of unexpended balances.

When replacing a grantee, unexpended balances of funds in the possession of such grantee in the fiscal year following the fiscal year for which the funds were appropriated may be transferred to the replacement grantee if the approved application of the replacement grantee provides for the continuation of the Head Start services without significant change to the same enrollees and their parents and undertakes to offer employment to the staff of the terminating grantee. A letter of concurrence in the change should be obtained from the terminating grantee whenever possible.

§ 1302.5 Notice for show cause and hearing.

(a) Except in emergency situations, the responsible HHS official will not suspend financial assistance under the Act unless the grantee has been given an opportunity, in accordance with part 1303, subpart D, of this chapter, to show cause why such action should not be taken.

(b) The responsible HHS official will not terminate a grant, suspend a grant for longer than 30 days, or deny refunding to a grantee, unless the grantee has been given an opportunity for a hearing in accordance with part 1303 of this chapter.

Subpart B—Bases for Selection of Grantees

§ 1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the applicants demonstrate in their application the most effective Head Start program.

(b) In addition to the applicable criteria at section 641(d) of the Head Start Act, the criteria for selection will include:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant to administer all Head Start programs carried out in the designated service area;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards (in 45 CFR part 1304) and program policies, including the opportunities provided for employment of target area residents and career development for paraprofessional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

[57 FR 41887, Sept. 14, 1992]

§ 1302.11 Selection among applicants to replace grantee.

The bases for making a selection among applicants which submit approvable applications to replace a grantee, in addition to the basis in § 1302.10 of this part, shall be:

(a) The extent to which provision is made for a continuation of services to the eligible children who have been participating as enrollees in the program;

(b) The extent to which provision is made for continuation of services to the target area or areas served by the program; and

(c) The extent to which provision is made for continued employment by the applicant of the qualified personnel of the existing program.

Subpart C—Change in Grantee Requiring Amendment of Approved Application or Replacement of Head Start Program

§ 1302.20 Grantee to show both legal status and financial viability.

(a) Upon the occurrence of a change in the legal condition of a grantee or of a substantial diminution of the financial resources of a grantee, or both, for example, such as might result from cessation of grants to the grantee under section 514 of the Act, the grantee is required within 30 days after the effective date of the regulations in this Part or the date the grantee has notice or knowledge of the change, whichever is later, to show in writing to the satisfaction of the responsible HHS official that it has and will continue to have legal status and financial viability. Failure to make this showing may result in suspension, termination or denial of refunding.

(b) The responsible HHS official will notify the grantee in writing of the decision as to the grantee's legal status and financial viability within 30 days after receiving the grantee's written submittal.

(c) When it is consistent with proper and efficient administration, the responsible HHS official may extend a grantee's program year to end on the date when a change in its legal condition or a substantial diminution of financial resources, or both, is scheduled to take place.

§ 1302.21 Grantee shows legal status but not financial viability.

(a) If a grantee shows legal status but impaired financial viability the responsible HHS official will entertain a timely request for amendment of the grantee's approved application which restores the grantee's financial viability either by a reduction in the program which produces minimum disruption to services and functions, or by an amendment which incorporates essential functions and services not previously funded as part of the total cost of the Head Start program, and, therefore, requires an increase in the amount of the Head Start grant but which will not result in a Federal share of the total cost of the Head Start program in excess of the percentage authorized by the Act or applicable regulations. In considering such a request which includes an increase in the Head Start grant the responsible HHS official will take into account the funds available to him for obligation and whether the proposed increase is consistent with that distribution of Head Start funds which:

(1) Maximizes the number of childen served within his area of responsibility, or in the case of experimental or demonstration programs, the experimental or demonstration benefits to be achieved, and

(2) Maintains approximately the same distribution of Head Start program funds to States as exist during the fiscal year in which his decision is made.

(b) A request for amendment will be considered to be timely if it is included with the written submittal required by §1302.20(a) of this part, submitted within 30 days after receiving the notice required by §1302.20(b) of this part, or submitted as a part of a timely application for refunding.

(c) The grantee will be notified in writing by the responsible HHS official within 30 days after submission of the requested amendment of the decision to approve or disapprove the requested amendment. If the requested amendment is disapproved the notice will contain a statement of the reasons for disapproval.

§ 1302.22 Suspension or termination of grantee which shows financial viability but not legal status.

If a grantee fails to show that it will continue to have legal status after the

date of change even though it may show financial viability, the grant shall be suspended or terminated or refunding shall be denied as of the date of change. If it appears reasonable to the responsible HHS official that the deficiency in legal status will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or the date of submission of a timely request for amendment. If such correction has not been made within the 30 day period the grant shall be terminated.

§ 1302.23 Suspension or termination of grantee which shows legal status but not financial viability.

(a) If the date of change of financial viability precedes or will precede the end of the grantee's program year the grant will be suspended or terminated on that date, or, if a request for amendment has been submitted under § 1302.21 of this part, upon written notice of disapproval of the requested amendment, whichever is later. If it appears reasonable to the responsible HHS official that the deficiency in financial viability will be corrected within 30 days he may suspend the grant for not to exceed 30 days after the date of change or notice of disapproval. If such correction has not been made within the 30 day period the grant will be terminated.

§ 1302.24 Denial of refunding of grantee.

(a) If the date of change will coincide with or will come after the end of the program year and the grantee has notice or knowledge of such change prior to the end of the program year any action taken to approve the grantee's application for refunding for the following program year shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and financial viability and on any requested amendment submitted by the grantee. If the requested amendment is disapproved the responsible HHS official may extend the program year in accordance with § 1302.20(c) of this part.

(b) If the date of change coincides with the end of the program year and the grantee does not have notice or knowledge of the change prior thereto and the grantee's application for refunding for the following program year has been approved, such approval shall be subject to rescission or ratification depending upon the decision of the responsible HHS official on the grantee's legal status and viability and on any requested financial amendment submitted by the grantee.

(c) If the date of change will coincide with or will come after the end of the program year and if the responsible HHS official has prior notice thereof from the grantee or other official source such as the Community Services Administration action to approve any application for refunding submitted by the grantee shall be deferred pending decision by the responsible HHS official on the grantee's legal status and financial viability and any requested amendment submitted by the grantee.

(d) When the responsible HHS official determines to approve a requested amendment for refunding he will approve it for the full term of the proposed program period, if that period as approved is no longer than a program year.

§ 1302.25 Control of funds of grantee scheduled for change.

Responsible HHS officials will place strict controls on the release of grant funds to grantees which are scheduled for change by cessation of their grants under section 519 of the Act. Specifically, the following controls will be established:

(a) Funds will be released on a monthly basis regardless of the form of grant payment.

(b) Funds released each month will be limited to the amount required to cover actual disbursements during that period for activities authorized under the approved Head Start program.

(c) The amount of funds released must be approved each month by the responsible HHS official.

Subpart D—Replacement of Indian Tribal Grantees

SOURCE: 63 FR 34329, June 24, 1998, unless otherwise noted.

§ 1302.30 Procedure for identification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, or which has been denied refunding as a Head Start grantee, may identify an agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied.

(2) The tribe must identify the alternate agency to the responsible HHS official, in writing, within the time for filing an appeal under 45 CFR Part 1303.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify a suitable alternative agency, a replacement grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of 45 CFR Part 1303, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§ 1302.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §§ 1302.10 (b)(1) through (5) and 1302.11 of this part.

§ 1302.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee, and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in the Head Start Act; and

(ii) Was the basis for the termination or denial of refunding described in § 1302.30 of this part.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

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AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 57 FR 59264, Dec. 14, 1992, unless otherwise noted.

Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been

designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with §1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant;

(4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with §1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) ''Good cause'' consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may ''good cause'' consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official or the Departmental Appeals Board shall have the right, on own motion or on motion of a party, to require such documentation as deemed necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

(g) The requirements of this section may not be waived.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACYF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may at his or her discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, the official will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate 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 delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting, or, if no informal meeting is held, within five days of receipt by the responsible HHS official of written material from all concerned parties. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, the official may suspend financial assistance in whole or in part and under such terms and conditions as he or she specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in §1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with §1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will be not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted.

(k) The responsible HHS official may modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his or her own initiative or upon a satisfactory showing that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with §1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part

without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to property or loss of project funds; or

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

(3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by §1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) The notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of the terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five workdays after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five workdays after the grantee's request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two workdays of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with §1303.14 or §1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of §1303.13 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraph (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and funding shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in paragraph § 1303.12(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subparts B and C of 45 CFR part 1302.

(f) Any appeal to the Departmental Appeals Board must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, or unclaimed. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the grantee believes is relevant and supportive of its position.

All such appeals shall be addressed to the Departmental Appeals Board, and the appellant will send a copy of the appeal to the Commissioner, ACYF, and the responsible HHS official. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside the scope of the program.

Federal funds may not be used to offset any costs during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will be notified by the Federal agency and will automatically be vested with jurisdiction over the termination action or the denial of refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administrative decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to timely correct one or more deficiencies as defined in 45 CFR Part 1304;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start program, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The legal basis for the termination under paragraph (b) of this section, the factual findings on which the termination is based or reference to specific findings in another document that form the basis for the termination (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations, or policy issuances on which ACF is relying for its determination.

(2) The fact that the termination may be appealed within 30 days to the Departmental Appeals Board (with a

copy of the appeal sent to the responsible HHS official and the Commissioner, ACYF) and that such appeal shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee that requests a hearing shall be afforded one, as mandated by 42. U.S.C. 9841.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That, if the activities of a delegate agency are the basis, in whole or in part, for the proposed termination, the identity of the delegate agency.

(5) That the grantee's appeal must meet the requirements set forth in paragraph (d) of this section.

(6) That a failure by the responsible HHS official to meet the requirements of this paragraph may result in the dismissal of the termination action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(d) A grantee's appeal must:

(1) Be in writing;

(2) Specifically identify what factual findings are disputed;

(3) Identify any legal issues raised, including relevant citations;

(4) Include an original and two copies of each document the grantee believes is relevant and supportive of its position (unless the grantee has obtained permission from the Departmental Appeals Board to submit fewer copies);

(5) Include any request for specifically identified documents the grantee wishes to obtain from ACF and a statement of the relevance of the requested documents, and a statement that the grantee has attempted informally to obtain the documents from ACF and was unable to do so;

(6) Grantees may submit additional documents within 14 days of receipt of the documentation submitted by ACF in response to the grantee's appeal and initial submittals. The ACF response to the appeal and initial submittals of the grantee shall be filed no later than 30 days after ACF's receipt of the material. In response to such a submittal, ACF may submit additional documents should it have any, or request discovery in connection with the new documents, or both, but must do so within 10 days of receipt of the additional filings;

(7) Include a statement on whether the grantee is requesting a hearing; and

(8) Be filed with the Departmental Appeals Board and be served on the responsible HHS official who issued the termination notice and on the Commissioner of ACYF. The grantee must also serve a copy of the appeal on any delegate agency that would be financially affected at the time the grantee files its appeal.

(e) The Departmental Appeals Board sanctions with respect to a grantee's failure to comply with the provisions of paragraph (d) of this section are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantee's failures are not substantial, but are confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other ''discovery'' request not timely made.

(3) The sanctions set forth in paragraphs (e)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that the grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

(f) (1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official shall award an interim grant to the grantee until a decision is made.

(2) If a grantee's funding has been suspended, no funding shall be available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful. An interim grantee will be appointed during the appeal period.

(3) If a grantee does not appeal an administrative decision to court within 30 days of its receipt of the decision, a replacement grantee will be immediately sought. An interim grantee may be named, if needed, pending the selection of a replacement grantee.

(4) An interim grantee may be sought even though the grantee has appealed an administrative decision to court within 30 days, if the responsible HHS official determines it necessary to do so. Examples of circumstances that warrant an interim grantee are to protect children and families from harm and Federal funds from misuse or dissipation or both.

(g) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall, within five days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the dates of notification.

(h) If the responsible HHS official initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(i) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies, whether or not they actually participated in the hearing.

(j) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted within a reasonable period of time to be fixed by the Departmental Appeals Board upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had 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 written information and argument submitted by the parties to the Departmental Appeals Board.

(k) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

[57 FR 59264, Dec. 14, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 65 FR 4768, Feb. 1, 2000]

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on a basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within 30 days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with §1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) The legal basis for the denial of refunding under paragraph (c) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, the delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(4) A statement that failure of the notice of denial of refunding to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(g) Paragraphs (i), (j), and (k) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

(h) The Departmental Appeals Board sanctions with respect to a grantee's appeal of denial of refunding are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantee's failure to comply is not substantial, but is confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other ''discovery'' request not timely made.

(3) The sanctions set forth in paragraphs (h)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

§ 1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and 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 otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee 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 (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When the parties submit prepared written direct testimony, witnesses must be available at the hearing for cross-examination and redirect examination. If a party can show substantial hardship in using prepared written direct testimony, the Departmental Appeals Board may exempt it from the requirement. However, such hardship must be more than difficulty in doing so, and it must be shown with respect to each witness.

(e) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed 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.

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the Departmental Appeals Board. This application must be made within 30 days of the grantee's appeal in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee. It must 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.

(g) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her 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.

(h) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

§ 1303.17 Time for hearing and decision.

(a) Any hearing on an appeal by a grantee from a notice of suspension, termination, or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the closing of the record, i.e., 60 days after the Board receives the final authorized submission in the case.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph (a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations,

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for

reasons beyond the control of either party or the Board.

[65 FR 4770, Feb. 1, 2000]

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 day period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of this position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties requests an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request or the expiration of the time

for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance; and

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten workdays after the informal meeting. The decision, including a statement of the reasons therefor, will be in writing, and will be served on the parties within five workdays from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five workdays of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of an agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 workdays after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five workdays of its receipt of that decision. Any such appeal must comply with the requirements of §1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of the fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

§ 1303.24 OMB control number.

The collection of information requirements in sections 1303.10 through 1303.23 of this part were approved on January 22, 1993, by the Office of Management and Budget and assigned OMB control number 0980–0242.

[58 FR 13019, Mar. 9, 1993]

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR THE OPERATION OF HEAD START PROGRAMS BY GRANTEE AND DELEGATE AGENCIES

Subpart A—General

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Subpart A—General

§ 1304.1 Purpose and scope.

This part describes regulations implementing sections 641A, 644(a) and (c), and 645A(h) of the Head Start Act, as amended (42 U.S.C. 9801 *et seq.*). Section 641A, paragraph (a)(3)(C) directs the Secretary of Health and Human Services to review and revise, as necessary, the Head Start Program Performance Standards in effect under prior law. This paragraph further provides that any revisions should not result in an elimination or reduction of requirements regarding the scope or types of Head Start services to a level below that of the requirements in effect on November 2, 1978. Section 641A(a) directs the Secretary to issue regulations establishing performance standards and minimum requirements with respect to health, education, parent involvement, nutrition, social, transition, and other Head Start services as well as administrative and financial management, facilities, and other appropriate program areas. Sections 644(a) and (c) require the issuance of regulations setting standards for the organization, management, and administration of Head Start programs. Section 645A(h) requires that the Secretary develop and publish performance standards for the newly authorized program for low-income pregnant women and families with infants and toddlers, entitled ''Early Head Start.'' The following regulations respond to these provisions in the Head Start Act, as amended, for new or revised Head Start Program Performance Standards. These new regulations define standards and minimum requirements for the entire range of Early Head Start and Head Start services, including those specified in the authorizing legislation. They are applicable to both Head Start and Early Head Start programs, with the exceptions noted, and are to be used in conjunction with the regulations at 45 CFR parts 1301, 1302, 1303, 1305, 1306, and 1308.

§ 1304.2 Effective date.

Early Head Start and Head Start grantee and delegate agencies must comply with these requirements on January 1, 1998. Nothing in this part

prohibits grantee or delegate agencies from voluntarily complying with these regulations prior to the effective date.

§ 1304.3 Definitions.

(a) As used in this part:

(1) *Assessment* means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2) *Children with disabilities* means, for children ages 3 to 5, those with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, need special education and related services. The term ''children with disabilities'' for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services. Infants and toddlers with disabilities are those from birth to three years, as identified under the Part H Program (Individuals with Disabilities Education Act) in their State.

(3) *Collaboration and collaborative relationships:*

(i) With other agencies, means planning and working with them in order to improve, share and augment services, staff, information and funds; and

(ii) With parents, means working in partnership with them.

(4) *Contagious* means capable of being transmitted from one person to another.

(5) *Curriculum* means a written plan that includes:

(i) The goals for children's development and learning;

(ii) The experiences through which they will achieve these goals;

(iii) What staff and parents do to help children achieve these goals; and

(iv) The materials needed to support the implementation of the curriculum. The curriculum is consistent with the Head Start Program Performance Standards and is based on sound child development principles about how children grow and learn.

(6) *Deficiency* means:

(i) An area or areas of performance in which an Early Head Start or Head Start grantee agency is not in compliance with State or Federal requirements, including but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title and which involves:

(A) A threat to the health, safety, or civil rights of children or staff;

(B) A denial to parents of the exercise of their full roles and responsibilities related to program governance;

(C) A failure to perform substantially the requirements related to Early Childhood Development and Health Services, Family and Community Partnerships, or Program Design and Management; or

(D) The misuse of Head Start grant funds.

(ii) The loss of legal status or financial viability, as defined in part 1302 of this title, loss of permits, debarment from receiving Federal grants or contracts or the improper use of Federal funds; or

(iii) Any other violation of Federal or State requirements including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title, and which the grantee has shown an unwillingness or inability to correct within the period specified by the responsible HHS official, of which the responsible HHS official has given the grantee written notice of pursuant to section 1304.61.

(7) *Developmentally appropriate* means any behavior or experience that is appropriate for the age span of the children and is implemented with attention to the different needs, interests, and developmental levels and cultural backgrounds of individual children.

(8) *Early Head Start* program means a program that provides low-income pregnant women and families with children from birth to age 3 with family-centered services that facilitate child development, support parental roles, and promote self-sufficiency.

(9) *Family* means for the purposes of the regulations in this part all persons:

(i) Living in the same household who are:

(A) Supported by the income of the parent(s) or guardian(s) of the child enrolling or participating in the program; or

(B) Related to the child by blood, marriage, or adoption; or

(ii) Related to the child enrolling or participating in the program as parents or siblings, by blood, marriage, or adoption.

(10) *Guardian* means a person legally responsible for a child.

(11) *Health* means medical, dental, and mental well-being.

(12) *Home visitor* means the staff member in the home-based program option assigned to work with parents to provide comprehensive services to children and their families through home visits and group socialization activities.

(13) *Individualized Family Service Plan (IFSP)* means a written plan for providing early intervention services to a child eligible under Part H of the Individuals with Disabilities Education Act (IDEA). (See 34 CFR 303.340–303.346 for regulations concerning IFSPs.)

(14) *Minimum requirements* means that each Early Head Start and Head Start grantee must demonstrate a level of compliance with Federal and State requirements such that no deficiency, as defined in this part, exists in its program.

(15) *Policy group* means the formal group of parents and community representatives required to be established by the agency to assist in decisions about the planning and operation of the program.

(16) *Program attendance* means the actual presence and participation in the program of a child enrolled in an Early Head Start or Head Start program.

(17) *Referral* means directing an Early Head Start or Head Start child or family member(s) to an appropriate source or resource for help, treatment or information.

(18) *Staff* means paid adults who have responsibilities related to children and their families who are enrolled in Early Head Start or Head Start programs.

(19) *Teacher* means an adult who has direct responsibility for the care and development of children from birth to 5 years of age in a center-based setting.

(20) *Volunteer* means an unpaid person who is trained to assist in implementing ongoing program activities on a regular basis under the supervision of a staff person in areas such as health, education, transportation, nutrition, and management.

(b) In addition to the definitions in this section, the definitions as set forth in 45 CFR 1301.2, 1302.2, 1303.2, 1305.2, 1306.3, and 1308.3 also apply, as used in this part.

Subpart B—Early Childhood Development and Health Services

§ 1304.20 Child health and developmental services.

(a) *Determining child health status.* (1) In collaboration with the parents and as quickly as possible, but no later than 90 calendar days (with the exception noted in paragraph (a)(2) of this section) from the child's entry into the program (for the purposes of 45 CFR 1304.20(a)(1), 45 CFR 1304.20(a)(2), and 45 CFR 1304.20(b)(1), ''entry'' means the first day that Early Head Start or Head Start services are provided to the child), grantee and delegate agencies must:

(i) Make a determination as to whether or not each child has an ongoing source of continuous, accessible health care. If a child does not have a source of ongoing health care, grantee and delegate agencies must assist the parents in accessing a source of care;

(ii) Obtain from a health care professional a determination as to whether the child is up-to-date on a schedule of

age appropriate preventive and primary health care which includes medical, dental and mental health. Such a schedule must incorporate the requirements for a schedule of well child care utilized by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the State in which they operate, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee that are based on prevalent community health problems:

(A) For children who are not up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must assist parents in making the necessary arrangements to bring the child up-to-date;

(B) For children who are up-to-date on an age-appropriate schedule of well child care, grantee and delegate agencies must ensure that they continue to follow the recommended schedule of well child care; and

(C) Grantee and delegate agencies must establish procedures to track the provision of health care services.

(iii) Obtain or arrange further diagnostic testing, examination, and treatment by an appropriate licensed or certified professional for each child with an observable, known or suspected health or developmental problem; and

(iv) Develop and implement a follow-up plan for any condition identified in 45 CFR 1304.20(a)(1)(ii) and (iii) so that any needed treatment has begun.

(2) Grantee and delegate agencies operating programs of shorter durations (90 days or less) must complete the above processes and those in 45 CFR 1304.20(b)(1) within 30 calendar days from the child's entry into the program.

(b) *Screening for developmental, sensory, and behavioral concerns.* (1) In collaboration with each child's parent, and within 45 calendar days of the child's entry into the program, grantee and delegate agencies must perform or obtain linguistically and age appropriate screening procedures to identify concerns regarding a child's developmental, sensory (visual and auditory), behavioral, motor, language, social, cognitive, perceptual, and emotional skills (see 45 CFR 1308.6(b)(3) for additional information). To the greatest extent possible, these screening procedures must be sensitive to the child's cultural background.

(2) Grantee and delegate agencies must obtain direct guidance from a mental health or child development professional on how to use the findings to address identified needs.

(3) Grantee and delegate agencies must utilize multiple sources of information on all aspects of each child's development and behavior, including input from family members, teachers, and other relevant staff who are familiar with the child's typical behavior.

(c) *Extended follow-up and treatment.* (1) Grantee and delegate agencies must establish a system of ongoing communication with the parents of children with identified health needs to facilitate the implementation of the follow-up plan.

(2) Grantee and delegate agencies must provide assistance to the parents, as needed, to enable them to learn how to obtain any prescribed medications, aids or equipment for medical and dental conditions.

(3) Dental follow-up and treatment must include:

(i) Fluoride supplements and topical fluoride treatments as recommended by dental professionals in communities where a lack of adequate fluoride levels has been determined or for every child with moderate to severe tooth decay; and

(ii) Other necessary preventive measures and further dental treatment as recommended by the dental professional.

(4) Grantee and delegate agencies must assist with the provision of related services addressing health concerns in accordance with the Individualized Education Program (IEP) and the Individualized Family Service Plan (IFSP).

(5) Early Head Start and Head Start funds may be used for professional medical and dental services when no other source of funding is available. When Early Head Start or Head Start funds are used for such services, grantee and delegate agencies must have written documentation of their efforts

to access other available sources of funding.

(d) *Ongoing care.* In addition to assuring children's participation in a schedule of well child care, as described in §1304.20(a) of this part, grantee and delegate agencies must implement ongoing procedures by which Early Head Start and Head Start staff can identify any new or recurring medical, dental, or developmental concerns so that they may quickly make appropriate referrals. These procedures must include: periodic observations and recordings, as appropriate, of individual children's developmental progress, changes in physical appearance (e.g., signs of injury or illness) and emotional and behavioral patterns. In addition, these procedures must include observations from parents and staff.

(e) *Involving parents.* In conducting the process, as described in §§1304.20 (a), (b), and (c), and in making all possible efforts to ensure that each child is enrolled in and receiving appropriate health care services, grantee and delegate agencies must:

(1) Consult with parents immediately when child health or developmental problems are suspected or identified;

(2) Familiarize parents with the use of and rationale for all health and developmental procedures administered through the program or by contract or agreement, and obtain advance parent or guardian authorization for such procedures. Grantee and delegate agencies also must ensure that the results of diagnostic and treatment procedures and ongoing care are shared with and understood by the parents;

(3) Talk with parents about how to familiarize their children in a developmentally appropriate way and in advance about all of the procedures they will receive while enrolled in the program;

(4) Assist parents in accordance with 45 CFR 1304.40(f)(2) (i) and (ii) to enroll and participate in a system of ongoing family health care and encourage parents to be active partners in their children's health care process; and

(5) If a parent or other legally responsible adult refuses to give authorization for health services, grantee and delegate agencies must maintain written documentation of the refusal.

(f) *Individualization of the program.* (1) Grantee and delegate agencies must use the information from the screening for developmental, sensory, and behavioral concerns, the ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents to help staff and parents determine how the program can best respond to each child's individual characteristics, strengths and needs.

(2) To support individualization for children with disabilities in their programs, grantee and delegate agencies must assure that:

(i) Services for infants and toddlers with disabilities and their families support the attainment of the expected outcomes contained in the Individualized Family Service Plan (IFSP) for children identified under the infants and toddlers with disabilities program (Part H) of the Individuals with Disabilities Education Act, as implemented by their State or Tribal government;

(ii) Enrolled families with infants and toddlers suspected of having a disability are promptly referred to the local early intervention agency designated by the State Part H plan to coordinate any needed evaluations, determine eligibility for Part H services, and coordinate the development of an IFSP for children determined to be eligible under the guidelines of that State's program. Grantee and delegate agencies must support parent participation in the evaluation and IFSP development process for infants and toddlers enrolled in their program;

(iii) They participate in and support efforts for a smooth and effective transition for children who, at age three, will need to be considered for services for preschool age children with disabilities; and

(iv) They participate in the development and implementation of the Individualized Education Program (IEP)

for preschool age children with disabilities, consistent with the requirements of 45 CFR 1308.19.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (a), (c) and (d).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.21 Education and early childhood development.

(a) *Child development and education approach for all children.* (1) In order to help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life, grantee and delegate agencies' approach to child development and education must:

(i) Be developmentally and linguistically appropriate, recognizing that children have individual rates of development as well as individual interests, temperaments, languages, cultural backgrounds, and learning styles;

(ii) Be inclusive of children with disabilities, consistent with their Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) (see 45 CFR 1308.19);

(iii) Provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition;

(iv) Provide a balanced daily program of child-initiated and adult-directed activities, including individual and small group activities; and

(v) Allow and enable children to independently use toilet facilities when it is developmentally appropriate and when efforts to encourage toilet training are supported by the parents.

(2) Parents must be:

(i) Invited to become integrally involved in the development of the program's curriculum and approach to child development and education;

(ii) Provided opportunities to increase their child observation skills and to share assessments with staff that will help plan the learning experiences; and

(iii) Encouraged to participate in staff-parent conferences and home visits to discuss their child's development and education (see 45 CFR 1304.40(e)(4) and 45 CFR 1304.40(i)(2)).

(3) Grantee and delegate agencies must support social and emotional development by:

(i) Encouraging development which enhances each child's strengths by:

(A) Building trust;

(B) Fostering independence;

(C) Encouraging self-control by setting clear, consistent limits, and having realistic expectations;

(D) Encouraging respect for the feelings and rights of others; and

(E) Supporting and respecting the home language, culture, and family composition of each child in ways that support the child's health and well-being; and

(ii) Planning for routines and transitions so that they occur in a timely, predictable and unrushed manner according to each child's needs.

(4) Grantee and delegate agencies must provide for the development of each child's cognitive and language skills by:

(i) Supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration;

(ii) Ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue;

(iii) Promoting interaction and language use among children and between children and adults; and

(iv) Supporting emerging literacy and numeracy development through materials and activities according to the developmental level of each child.

(5) In center-based settings, grantee and delegate agencies must promote each child's physical development by:

(i) Providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross motor skills;

(ii) Providing appropriate time, space, equipment, materials and adult guidance for the development of fine motor skills according to each child's developmental level; and

(iii) Providing an appropriate environment and adult guidance for the participation of children with special needs.

(6) In home-based settings, grantee and delegate agencies must encourage parents to appreciate the importance of physical development, provide opportunities for children's outdoor and indoor active play, and guide children in the safe use of equipment and materials.

(b) *Child development and education approach for infants and toddlers.* (1) Grantee and delegate agencies' program of services for infants and toddlers must encourage (see 45 CFR 1304.3(a)(5) for a definition of curriculum):

(i) The development of secure relationships in out-of-home care settings for infants and toddlers by having a limited number of consistent teachers over an extended period of time. Teachers must demonstrate an understanding of the child's family culture and, whenever possible, speak the child's language (see 45 CFR 1304.52(g)(2));

(ii) Trust and emotional security so that each child can explore the environment according to his or her developmental level; and

(iii) Opportunities for each child to explore a variety of sensory and motor experiences with support and stimulation from teachers and family members.

(2) Grantee and delegate agencies must support the social and emotional development of infants and toddlers by promoting an environment that:

(i) Encourages the development of self-awareness, autonomy, and self-expression; and

(ii) Supports the emerging communication skills of infants and toddlers by providing daily opportunities for each child to interact with others and to express himself or herself freely.

(3) Grantee and delegate agencies must promote the physical development of infants and toddlers by:

(i) Supporting the development of the physical skills of infants and toddlers including gross motor skills, such as grasping, pulling, pushing, crawling, walking, and climbing; and

(ii) Creating opportunities for fine motor development that encourage the control and coordination of small, specialized motions, using the eyes, mouth, hands, and feet.

(c) *Child development and education approach for preschoolers.* (1) Grantee and delegate agencies, in collaboration with the parents, must implement a curriculum (see 45 CFR 1304.3(a)(5)) that:

(i) Supports each child's individual pattern of development and learning;

(ii) Provides for the development of cognitive skills by encouraging each child to organize his or her experiences, to understand concepts, and to develop age appropriate literacy, numeracy, reasoning, problem solving and decision-making skills which form a foundation for school readiness and later school success;

(iii) Integrates all educational aspects of the health, nutrition, and mental health services into program activities;

(iv) Ensures that the program environment helps children develop emotional security and facility in social relationships;

(v) Enhances each child's understanding of self as an individual and as a member of a group;

(vi) Provides each child with opportunities for success to help develop feelings of competence, self-esteem, and positive attitudes toward learning; and

(vii) Provides individual and small group experiences both indoors and outdoors.

(2) Staff must use a variety of strategies to promote and support children's learning and developmental progress based on the observations and ongoing assessment of each child (see 45 CFR 1304.20(b), 1304.20(d), and 1304.20(e)).

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.22 Child health and safety.

(a) *Health emergency procedures.* Grantee and delegate agencies operating center-based programs must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained. At a minimum, these policies and procedures must include:

(1) Posted policies and plans of action for emergencies that require rapid response on the part of staff (e.g., a child choking) or immediate medical or dental attention;

(2) Posted locations and telephone numbers of emergency response systems. Up-to-date family contact information and authorization for emergency care for each child must be readily available;

(3) Posted emergency evacuation routes and other safety procedures for emergencies (e.g., fire or weather-related) which are practiced regularly (see 45 CFR 1304.53 for additional information);

(4) Methods of notifying parents in the event of an emergency involving their child; and

(5) Established methods for handling cases of suspected or known child abuse and neglect that are in compliance with applicable Federal, State, or Tribal laws.

(b) *Conditions of short-term exclusion and admittance.* (1) Grantee and delegate agencies must temporarily exclude a child with a short-term injury or an acute or short-term contagious illness, that cannot be readily accommodated, from program participation in center-based activities or group experiences, but only for that generally short-term period when keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child.

(2) Grantee and delegate agencies must not deny program admission to any child, nor exclude any enrolled child from program participation for a long-term period, solely on the basis of his or her health care needs or medication requirements unless keeping the child in care poses a significant risk to the health or safety of the child or anyone in contact with the child and the risk cannot be eliminated or reduced to an acceptable level through reasonable modifications in the grantee or delegate agency's policies, practices or procedures or by providing appropriate auxiliary aids which would enable the child to participate without fundamentally altering the nature of the program.

(3) Grantee and delegate agencies must request that parents inform them of any health or safety needs of the child that the program may be required to address. Programs must share information, as necessary, with appropriate staff regarding accommodations needed in accordance with the program's confidentiality policy.

(c) *Medication administration.* Grantee and delegate agencies must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. Grantee and delegate agencies may modify these procedures as necessary to satisfy State or Tribal laws, but only where such laws are consistent with Federal laws. The procedures must include:

(1) Labeling and storing, under lock and key, and refrigerating, if necessary, all medications, including those required for staff and volunteers;

(2) Designating a trained staff member(s) or school nurse to administer, handle and store child medications;

(3) Obtaining physicians' instructions and written parent or guardian authorizations for all medications administered by staff;

(4) Maintaining an individual record of all medications dispensed, and reviewing the record regularly with the child's parents;

(5) Recording changes in a child's behavior that have implications for drug dosage or type, and assisting parents in communicating with their physician regarding the effect of the medication on the child; and

(6) Ensuring that appropriate staff members can demonstrate proper techniques for administering, handling, and storing medication, including the use of any necessary equipment to administer medication.

(d) *Injury prevention.* Grantee and delegate agencies must:

(1) Ensure that staff and volunteers can demonstrate safety practices; and

(2) Foster safety awareness among children and parents by incorporating it into child and parent activities.

(e) *Hygiene.* (1) Staff, volunteers, and children must wash their hands with soap and running water at least at the following times:

(i) After diapering or toilet use;

(ii) Before food preparation, handling, consumption, or any other food-related activity (e.g., setting the table);

(iii) Whenever hands are contaminated with blood or other bodily fluids; and

(iv) After handling pets or other animals.

(2) Staff and volunteers must also wash their hands with soap and running water:

(i) Before and after giving medications;

(ii) Before and after treating or bandaging a wound (nonporous gloves should be worn if there is contact with blood or blood-containing body fluids); and

(iii) After assisting a child with toilet use.

(3) Nonporous (e.g., latex) gloves must be worn by staff when they are in contact with spills of blood or other visibly bloody bodily fluids.

(4) Spills of bodily fluids (e.g., urine, feces, blood, saliva, nasal discharge, eye discharge or any fluid discharge) must be cleaned and disinfected immediately in keeping with professionally established guidelines (e.g., standards of the Occupational Safety Health Administration, U.S. Department of Labor). Any tools and equipment used to clean spills of bodily fluids must be cleaned and disinfected immediately. Other blood-contaminated materials must be disposed of in a plastic bag with a secure tie.

(5) Grantee and delegate agencies must adopt sanitation and hygiene procedures for diapering that adequately protect the health and safety of children served by the program and staff. Grantee and delegate agencies must ensure that staff properly conduct these procedures.

(6) Potties that are utilized in a center-based program must be emptied into the toilet and cleaned and disinfected after each use in a utility sink used for this purpose.

(7) Grantee and delegate agencies operating programs for infants and toddlers must space cribs and cots at least three feet apart to avoid spreading contagious illness and to allow for easy access to each child.

(f) *First aid kits.* (1) Readily available, well-supplied first aid kits appropriate for the ages served and the program size must be maintained at each facility and available on outings away from the site. Each kit must be accessible to staff members at all times, but must be kept out of the reach of children.

(2) First aid kits must be restocked after use, and an inventory must be conducted at regular intervals.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (c).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.23 Child nutrition.

(a) *Identification of nutritional needs.* Staff and families must work together to identify each child's nutritional needs, taking into account staff and family discussions concerning:

(1) Any relevant nutrition-related assessment data (height, weight, hemoglobin/hematocrit) obtained under 45 CFR 1304.20(a);

(2) Information about family eating patterns, including cultural preferences, special dietary requirements for each child with nutrition-related health problems, and the feeding requirements of infants and toddlers and each child with disabilities (see 45 CFR 1308.20);

(3) For infants and toddlers, current feeding schedules and amounts and types of food provided, including whether breast milk or formula and baby food is used; meal patterns; new foods introduced; food intolerances and preferences; voiding patterns; and observations related to developmental changes in feeding and nutrition. This information must be shared with parents and updated regularly; and

(4) Information about major community nutritional issues, as identified through the Community Assessment or by the Health Services Advisory Committee or the local health department.

(b) *Nutritional services.* (1) Grantee and delegate agencies must design and implement a nutrition program that meets the nutritional needs and feeding requirements of each child, including those with special dietary needs and children with disabilities. Also, the nutrition program must serve a variety of foods which consider cultural and ethnic preferences and which broaden the child's food experience.

(i) All Early Head Start and Head Start grantee and delegate agencies must use funds from USDA Food and Consumer Services Child Nutrition

Programs as the primary source of payment for meal services. Early Head Start and Head Start funds may be used to cover those allowable costs not covered by the USDA.

(ii) Each child in a part-day center-based setting must receive meals and snacks that provide at least ⅓ of the child's daily nutritional needs. Each child in a center-based full-day program must receive meals and snacks that provide ½ to ⅔ of the child's daily nutritional needs, depending upon the length of the program day.

(iii) All children in morning center-based settings who have not received breakfast at the time they arrive at the Early Head Start or Head Start program must be served a nourishing breakfast.

(iv) Each infant and toddler in center-based settings must receive food appropriate to his or her nutritional needs, developmental readiness, and feeding skills, as recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.

(v) For 3- to 5-year-olds in center-based settings, the quantities and kinds of food served must conform to recommended serving sizes and minimum standards for meal patterns recommended in the USDA meal pattern or nutrient standard menu planning requirements outlined in 7 CFR parts 210, 220, and 226.

(vi) For 3- to 5-year-olds in center-based settings or other Head Start group experiences, foods served must be high in nutrients and low in fat, sugar, and salt.

(vii) Meal and snack periods in center-based settings must be appropriately scheduled and adjusted, where necessary, to ensure that individual needs are met. Infants and young toddlers who need it must be fed ''on demand'' to the extent possible or at appropriate intervals.

(2) Grantee and delegate agencies operating home-based program options must provide appropriate snacks and meals to each child during group socialization activities (see 45 CFR 1306.33 for information regarding home-based group socialization).

(3) Staff must promote effective dental hygiene among children in conjunction with meals.

(4) Parents and appropriate community agencies must be involved in planning, implementing, and evaluating the agencies' nutritional services.

(c) *Meal service.* Grantee and delegate agencies must ensure that nutritional services in center-based settings contribute to the development and socialization of enrolled children by providing that:

(1) A variety of food is served which broadens each child's food experiences;

(2) Food is not used as punishment or reward, and that each child is encouraged, but not forced, to eat or taste his or her food;

(3) Sufficient time is allowed for each child to eat;

(4) All toddlers and preschool children and assigned classroom staff, including volunteers, eat together family style and share the same menu to the extent possible;

(5) Infants are held while being fed and are not laid down to sleep with a bottle;

(6) Medically-based diets or other dietary requirements are accommodated; and

(7) As developmentally appropriate, opportunity is provided for the involvement of children in food-related activities.

(d) *Family assistance with nutrition.* Parent education activities must include opportunities to assist individual families with food preparation and nutritional skills.

(e) *Food safety and sanitation.* (1) Grantee and delegate agencies must post evidence of compliance with all applicable Federal, State, Tribal, and local food safety and sanitation laws, including those related to the storage, preparation and service of food and the health of food handlers. In addition, agencies must contract only with food service vendors that are licensed in accordance with State, Tribal or local laws.

(2) For programs serving infants and toddlers, facilities must be available

for the proper storage and handling of breast milk and formula.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, Jan. 15, 1998]

§ 1304.24 Child mental health.

(a) *Mental health services.* (1) Grantee and delegate agencies must work collaboratively with parents (see 45 CFR 1304.40(f) for issues related to parent education) by:

(i) Soliciting parental information, observations, and concerns about their child's mental health;

(ii) Sharing staff observations of their child and discussing and anticipating with parents their child's behavior and development, including separation and attachment issues;

(iii) Discussing and identifying with parents appropriate responses to their child's behaviors;

(iv) Discussing how to strengthen nurturing, supportive environments and relationships in the home and at the program;

(v) Helping parents to better understand mental health issues; and

(vi) Supporting parents' participation in any needed mental health interventions.

(2) Grantee and delegate agencies must secure the services of mental health professionals on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health; and

(3) Mental health program services must include a regular schedule of onsite mental health consultation involving the mental health professional, program staff, and parents on how to:

(i) Design and implement program practices responsive to the identified behavioral and mental health concerns of an individual child or group of children;

(ii) Promote children's mental wellness by providing group and individual staff and parent education on mental health issues;

(iii) Assist in providing special help for children with atypical behavior or development; and

(iv) Utilize other community mental health resources, as needed.

Subpart C—Family and Community Partnerships

§ 1304.40 Family partnerships.

(a) *Family goal setting.* (1) Grantee and delegate agencies must engage in a process of collaborative partnership-building with parents to establish mutual trust and to identify family goals, strengths, and necessary services and other supports. This process must be initiated as early after enrollment as possible and it must take into consideration each family's readiness and willingness to participate in the process.

(2) As part of this ongoing partnership, grantee and delegate agencies must offer parents opportunities to develop and implement individualized family partnership agreements that describe family goals, responsibilities, timetables and strategies for achieving these goals as well as progress in achieving them. In home-based program options, this agreement must include the above information as well as the specific roles of parents in home visits and group socialization activities (see 45 CFR 1306.33(b)).

(3) To avoid duplication of effort, or conflict with, any preexisting family plans developed between other programs and the Early Head Start or Head Start family, the family partnership agreement must take into account, and build upon as appropriate, information obtained from the family and other community agencies concerning preexisting family plans. Grantee and delegate agencies must coordinate, to the extent possible, with families and other agencies to support the accomplishment of goals in the preexisting plans.

(4) A variety of opportunities must be created by grantee and delegate agencies for interaction with parents throughout the year.

(5) Meetings and interactions with families must be respectful of each family's diversity and cultural and ethnic background.

(b) *Accessing community services and resources.* (1) Grantee and delegate agencies must work collaboratively with all participating parents to identify and continually access, either directly or through referrals, services and resources that are responsive to each family's interests and goals, including:

(i) Emergency or crisis assistance in areas such as food, housing, clothing, and transportation;

(ii) Education and other appropriate interventions, including opportunities for parents to participate in counseling programs or to receive information on mental health issues that place families at risk, such as substance abuse, child abuse and neglect, and domestic violence; and

(iii) Opportunities for continuing education and employment training and other employment services through formal and informal networks in the community.

(2) Grantee and delegate agencies must follow-up with each family to determine whether the kind, quality, and timeliness of the services received through referrals met the families' expectations and circumstances.

(c) *Services to pregnant women who are enrolled in programs serving pregnant women, infants, and toddlers.* (1) Early Head Start grantee and delegate agencies must assist pregnant women to access comprehensive prenatal and postpartum care, through referrals, immediately after enrollment in the program. This care must include:

(i) Early and continuing risk assessments, which include an assessment of nutritional status as well as nutrition counseling and food assistance, if necessary;

(ii) Health promotion and treatment, including medical and dental examinations on a schedule deemed appropriate by the attending health care providers as early in the pregnancy as possible; and

(iii) Mental health interventions and follow-up, including substance abuse prevention and treatment services, as needed.

(2) Grantee and delegate agencies must provide pregnant women and other family members, as appropriate, with prenatal education on fetal development (including risks from smoking and alcohol), labor and delivery, and postpartum recovery (including maternal depression).

(3) Grantee and delegate agencies must provide information on the benefits of breast feeding to all pregnant and nursing mothers. For those who choose to breast feed in center-based programs, arrangements must be provided as necessary.

(d) *Parent involvement—general.* (1) In addition to involving parents in program policy-making and operations (see 45 CFR 1304.50), grantee and delegate agencies must provide parent involvement and education activities that are responsive to the ongoing and expressed needs of the parents, both as individuals and as members of a group. Other community agencies should be encouraged to assist in the planning and implementation of such programs.

(2) Early Head Start and Head Start settings must be open to parents during all program hours. Parents must be welcomed as visitors and encouraged to observe children as often as possible and to participate with children in group activities. The participation of parents in any program activity must be voluntary, and must not be required as a condition of the child's enrollment.

(3) Grantee and delegate agencies must provide parents with opportunities to participate in the program as employees or volunteers (see 45 CFR 1304.52(b)(3) for additional requirements about hiring parents).

(e) *Parent involvement in child development and education.* (1) Grantee and delegate agencies must provide opportunities to include parents in the development of the program's curriculum and approach to child development and education (see 45 CFR 1304.3(a)(5) for a definition of curriculum).

(2) Grantees and delegate agencies operating home-based program options must build upon the principles of adult learning to assist, encourage, and support parents as they foster the growth and development of their children.

(3) Grantee and delegate agencies must provide opportunities for parents to enhance their parenting skills, knowledge, and understanding of the educational and developmental needs

and activities of their children and to share concerns about their children with program staff (see 45 CFR 1304.21 for additional requirements related to parent involvement).

(4) Grantee and delegate agencies must provide, either directly or through referrals to other local agencies, opportunities for children and families to participate in family literacy services by:

(i) Increasing family access to materials, services, and activities essential to family literacy development; and

(ii) Assisting parents as adult learners to recognize and address their own literacy goals.

(5) In addition to the two home visits, teachers in center-based programs must conduct staff-parent conferences, as needed, but no less than two per program year, to enhance the knowledge and understanding of both staff and parents of the educational and developmental progress and activities of children in the program (see 45 CFR 1304.21(a)(2)(iii) and 45 CFR 1304.40(i) for additional requirements about staff-parent conferences and home visits).

(f) *Parent involvement in health, nutrition, and mental health education.* (1) Grantee and delegate agencies must provide medical, dental, nutrition, and mental health education programs for program staff, parents, and families.

(2) Grantee and delegate agencies must ensure that, at a minimum, the medical and dental health education program:

(i) Assists parents in understanding how to enroll and participate in a system of ongoing family health care.

(ii) Encourages parents to become active partners in their children's medical and dental health care process and to accompany their child to medical and dental examinations and appointments; and

(iii) Provides parents with the opportunity to learn the principles of preventive medical and dental health, emergency first-aid, occupational and environmental hazards, and safety practices for use in the classroom and in the home. In addition to information on general topics (e.g., maternal and child health and the prevention of Sudden Infant Death Syndrome), information specific to the health needs of individual children must also be made available to the extent possible.

(3) Grantee and delegate agencies must ensure that the nutrition education program includes, at a minimum:

(i) Nutrition education in the selection and preparation of foods to meet family needs and in the management of food budgets; and

(ii) Parent discussions with program staff about the nutritional status of their child.

(4) Grantee and delegate agencies must ensure that the mental health education program provides, at a minimum (see 45 CFR 1304.24 for issues related to mental health education):

(i) A variety of group opportunities for parents and program staff to identify and discuss issues related to child mental health;

(ii) Individual opportunities for parents to discuss mental health issues related to their child and family with program staff; and

(iii) The active involvement of parents in planning and implementing any mental health interventions for their children.

(g) *Parent involvement in community advocacy.* (1) Grantee and delegate agencies must:

(i) Support and encourage parents to influence the character and goals of community services in order to make them more responsive to their interests and needs; and

(ii) Establish procedures to provide families with comprehensive information about community resources (see 45 CFR 1304.41(a)(2) for additional requirements).

(2) Parents must be provided regular opportunities to work together, and with other community members, on activities that they have helped develop and in which they have expressed an interest.

(h) *Parent involvement in transition activities.* (1) Grantee and delegate agencies must assist parents in becoming their children's advocate as they transition both into Early Head Start or Head Start from the home or other child care setting, and from Head Start to elementary school, a Title I of the Elementary and Secondary Education

Act preschool program, or a child care setting.

(2) Staff must work to prepare parents to become their children's advocate through transition periods by providing that, at a minimum, a staff-parent meeting is held toward the end of the child's participation in the program to enable parents to understand the child's progress while enrolled in Early Head Start or Head Start.

(3) To promote the continued involvement of Head Start parents in the education and development of their children upon transition to school, grantee and delegate agencies must:

(i) Provide education and training to parents to prepare them to exercise their rights and responsibilities concerning the education of their children in the school setting; and

(ii) Assist parents to communicate with teachers and other school personnel so that parents can participate in decisions related to their children's education.

(4) See 45 CFR 1304.41(c) for additional standards related to children's transition to and from Early Head Start or Head Start.

(i) *Parent involvement in home visits.* (1) Grantee and delegate agencies must not require that parents permit home visits as a condition of the child's participation in Early Head Start or Head Start center-based program options. Every effort must be made to explain the advantages of home visits to the parents.

(2) The child's teacher in center-based programs must make no less than two home visits per program year to the home of each enrolled child, unless the parents expressly forbid such visits, in accordance with the requirements of 45 CFR 1306.32(b)(8). Other staff working with the family must make or join home visits, as appropriate.

(3) Grantee and delegate agencies must schedule home visits at times that are mutually convenient for the parents or primary caregivers and staff.

(4) In cases where parents whose children are enrolled in the center-based program option ask that the home visits be conducted outside the home, or in cases where a visit to the home presents significant safety hazards for staff, the home visit may take place at an Early Head Start or Head Start site or at another safe location that affords privacy. Home visits in home-based program options must be conducted in the family's home. (See 45 CFR 1306.33 regarding the home-based program option.)

(5) In addition, grantee and delegate agencies operating home-based program options must meet the requirements of 45 CFR 1306.33(a)(1) regarding home visits.

(6) Grantee and delegate agencies serving infants and toddlers must arrange for health staff to visit each newborn within two weeks after the infant's birth to ensure the well-being of both the mother and the child.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2313, 2314, Jan. 15, 1998]

§ 1304.41 Community partnerships.

(a) *Partnerships.* (1) Grantee and delegate agencies must take an active role in community planning to encourage strong communication, cooperation, and the sharing of information among agencies and their community partners and to improve the delivery of community services to children and families in accordance with the agency's confidentiality policies. Documentation must be maintained to reflect the level of effort undertaken to establish community partnerships (see 45 CFR 1304.51 for additional planning requirements).

(2) Grantee and delegate agencies must take affirmative steps to establish ongoing collaborative relationships with community organizations to promote the access of children and families to community services that are responsive to their needs, and to ensure that Early Head Start and Head Start programs respond to community needs, including:

(i) Health care providers, such as clinics, physicians, dentists, and other health professionals;

(ii) Mental health providers;

(iii) Nutritional service providers;

(iv) Individuals and agencies that provide services to children with disabilities and their families (see 45 CFR 1308.4 for specific service requirements);

(v) Family preservation and support services;

(vi) Child protective services and any other agency to which child abuse must be reported under State or Tribal law;

(vii) Local elementary schools and other educational and cultural institutions, such as libraries and museums, for both children and families;

(viii) Providers of child care services; and

(ix) Any other organizations or businesses that may provide support and resources to families.

(3) Grantee and delegate agencies must perform outreach to encourage volunteers from the community to participate in Early Head Start and Head Start programs.

(4) To enable the effective participation of children with disabilities and their families, grantee and delegate agencies must make specific efforts to develop interagency agreements with local education agencies (LEAs) and other agencies within the grantee and delegate agency's service area (see 45 CFR 1308.4(h) for specific requirements concerning interagency agreements).

(b) *Advisory committees.* Each grantee directly operating an Early Head Start or Head Start program, and each delegate agency, must establish and maintain a Health Services Advisory Committee which includes Head Start parents, professionals, and other volunteers from the community. Grantee and delegate agencies also must establish and maintain such other service advisory committees as they deem appropriate to address program service issues such as community partnerships and to help agencies respond to community needs.

(c) *Transition services.* (1) Grantee and delegate agencies must establish and maintain procedures to support successful transitions for enrolled children and families from previous child care programs into Early Head Start or Head Start and from Head Start into elementary school, a Title I of the Elementary and Secondary Education Act preschool program, or other child care settings. These procedures must include:

(i) Coordinating with the schools or other agencies to ensure that individual Early Head Start or Head Start children's relevant records are transferred to the school or next placement in which a child ill enroll or from earlier placements to Early Head Start or Head Start;

(ii) Outreach to encourage communication between Early Head Start or Head Start staff and their counterparts in the schools and other child care settings including principals, teachers, social workers and health staff to facilitate continuity of programming;

(iii) Initiating meetings involving Head Start teachers and parents and kindergarten or elementary school teachers to discuss the developmental progress and abilities of individual children; and

(iv) Initiating joint transition-related training for Early Head Start or Head Start staff and school or other child development staff.

(2) To ensure the most appropriate placement and services following participation in Early Head Start, transition planning must be undertaken for each child and family at least six months prior to the child's third birthday. The process must take into account: The child's health status and developmental level, progress made by the child and family while in Early Head Start, current and changing family circumstances, and the availability of Head Start and other child development or child care services in the community. As appropriate, a child may remain in Early Head Start, following his or her third birthday, for additional months until he or she can transition into Head Start or another program.

(3) See 45 CFR 1304.40(h) for additional requirements related to parental participation in their child's transition to and from Early Head Start or Head Start.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraph (a).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

Subpart D—Program Design and Management

§ 1304.50 Program governance.

(a) *Policy Council, Policy Committee, and Parent Committee structure.* (1) Grantee and delegate agencies must establish and maintain a formal structure of shared governance through which parents can participate in policy making or in other decisions about the program. This structure must consist of the following groups, as required:

(i) Policy Council. This Council must be established at the grantee level.

(ii) Policy Committee. This Committee must be established at the delegate agency level when the program is administered in whole or in part by such agencies (see 45 CFR 1301.2 for a definition of a delegate agency).

(iii) Parent Committee. For center-based programs, this Committee must be established at the center level. For other program options, an equivalent Committee must be established at the local program level. When programs operate more than one option from the same site, the Parent Committee membership is combined unless parents choose to have a separate Committee for each option.

(2) Parent Committees must be comprised exclusively of the parents of children currently enrolled at the center level for center-based programs or at the equivalent level for other program options (see 45 CFR 1306.3(h) for a definition of a Head Start parent).

(3) All Policy Councils, Policy Committees, and Parent Committees must be established as early in the program year as possible. Grantee Policy Councils and delegate Policy Committees may not be dissolved until successor Councils or Committees are elected and seated.

(4) When a grantee has delegated the entire Head Start program to one delegate agency, it is not necessary to have a Policy Committee in addition to a grantee agency Policy Council.

(5) The governing body (the group with legal and fiscal responsibility for administering the Early Head Start or Head Start program) and the Policy Council or Policy Committee must not have identical memberships and functions.

(b) *Policy group composition and formation.* (1) Each grantee and delegate agency governing body operating an Early Head Start or Head Start program must (except where such authority is ceded to the Policy Council or Policy Committee) propose, within the framework of these regulations, the total size of their respective policy groups (based on the number of centers, classrooms or other program option units, and the number of children served by their Early Head Start or Head Start program), the procedures for the election of parent members, and the procedure for the selection of community representatives. These proposals must be approved by the Policy Council or Policy Committee.

(2) Policy Councils and Policy Committees must be comprised of two types of representatives: parents of currently enrolled children and community representatives. At least 51 percent of the members of these policy groups must be the parents of currently enrolled children (see 45 CFR 1306.3(h) for a definition of a Head Start parent).

(3) Community representatives must be drawn from the local community: businesses; public or private community, civic, and professional organizations; and others who are familiar with resources and services for low-income children and families, including for example the parents of formerly enrolled children.

(4) All parent members of Policy Councils or Policy Committees must stand for election or re-election annually. All community representatives also must be selected annually.

(5) Policy Councils and Policy Committees must limit the number of one-year terms any individual may serve on either body to a combined total of three terms.

(6) No grantee or delegate agency staff (or members of their immediate families) may serve on Policy Councils or Policy Committees except parents who occasionally substitute for regular Early Head Start or Head Start staff. In the case of Tribal grantees, this exclusion applies only to Tribal staff who work in areas directly related to or which directly impact upon any Early

Head Start or Head Start administrative, fiscal or programmatic issues.

(7) Parents of children currently enrolled in all program options must be proportionately represented on established policy groups.

(c) *Policy group responsibilities—general.* At a minimum policy groups must be charged with the responsibilities described in paragraphs (d), (f), (g), and (h) of this section and repeated in appendix A of this section.

(d) *The Policy Council or Policy Committee.* (1) Policy Councils and Policy Committees must work in partnership with key management staff and the governing body to develop, review, and approve or disapprove the following policies and procedures:

(i) All funding applications and amendments to funding applications for Early Head Start and Head Start, including administrative services, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils);

(ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making;

(iii) Procedures for program planning in accordance with this part and the requirements of 45 CFR 1305.3;

(iv) The program's philosophy and long- and short-range program goals and objectives (see 45 CFR 1304.51(a) and 45 CFR 1305.3 for additional requirements regarding program planning);

(v) The selection of delegate agencies and their service areas (this regulation is binding on Policy Councils exclusively) (see 45 CFR 1301.33 and 45 CFR 1305.3(a) for additional requirements about delegate agency and service area selection, respectively);

(vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen;

(vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR part 1305;

(viii) The annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including planning or other actions that may result from the review of the annual audit and findings from the Federal monitoring review (see 45 CFR 1304.51(i)(1) for additional requirements about the annual self-assessment);

(ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31, including standards of conduct for program staff, consultants, and volunteers;

(x) Decisions to hire or terminate the Early Head Start or Head Start director of the grantee or delegate agency; and

(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the grantee or delegate agency.

(2) In addition, Policy Councils and Policy Committees must perform the following functions directly:

(i) Serve as a link to the Parent Committees, grantee and delegate agency governing bodies, public and private organizations, and the communities they serve;

(ii) Assist Parent Committees in communicating with parents enrolled in all program options to ensure that they understand their rights, responsibilities, and opportunities in Early Head Start and Head Start and to encourage their participation in the program;

(iii) Assist Parent Committees in planning, coordinating, and organizing program activities for parents with the assistance of staff, and ensuring that funds set aside from program budgets are used to support parent activities;

(iv) Assist in recruiting volunteer services from parents, community residents, and community organizations, and assist in the mobilization of community resources to meet identified needs; and

(v) Establish and maintain procedures for working with the grantee or delegate agency to resolve community complaints about the program.

(e) *Parent Committee.* The Parent Committee must carry out at least the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services;

(2) Plan, conduct, and participate in informal as well as formal programs and activities for parents and staff; and

(3) Within the guidelines established by the governing body, Policy Council, or Policy Committee, participate in the recruitment and screening of Early Head Start and Head Start employees.

(f) *Policy Council, Policy Committee, and Parent Committee reimbursement.* Grantee and delegate agencies must enable low-income members to participate fully in their group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members.

(g) *Governing body responsibilities.* (1) Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.

(2) Grantee and delegate agencies must ensure that appropriate internal controls are established and implemented to safeguard Federal funds in accordance with 45 CFR 1301.13.

(h) *Internal dispute resolution.* Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, between the governing body and policy group.

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES

[A = General responsibility; B = Operating responsibility; C = Must approve or disapprove; D = Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
I. Planning						
(a) 1304.50(d)(1)(iii) Procedures for program planning in accordance with this Part and the requirements of 45 CFR 1305.3.	A & C	C	C	C	B	D
(b) 1304.50(d)(1)(iv) The program's philosophy and long- and short-range program goals and objectives (see 45 CFR 1304.51(a) and 45 CFR 1305.3 for additional requirements regarding program planning).	A & C	C	C	C	B	D
(c) 1304.50(d)(1)(v) The selection of delegate agencies and their service areas (this regulation is binding on Policy Councils exclusively) (see 45 CFR 1301.33 and 45 CFR 1305.3(a) for additional requirements about delegate agency and service area selection, respectively).	A & C	C	—	—	B (Grantee only)	D (Grantee only)
(d) 1304.50(d)(1)(vii) Criteria for defining recruitment, selection, and enrollment priorities, in accordance with the requirements of 45 CFR Part 1305.	A	C	A	C	B	D
(e) 1304.50(d)(1)(i) All funding applications and amendments to funding applications for Early Head Start and Head Start, including administrative services, prior to the submission of such applications to the grantee (in the case of Policy Committees) or to HHS (in the case of Policy Councils).	A & C	C	A & C	C	B	D

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES—Continued

[A = General responsibility; B = Operating responsibility; C = Must approve or disapprove; D = Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
(f) 1304.50(f) Policy Council, Policy Committee, and Parent Committee reimbursement. Grantee and delegate agencies must enable low-income members to participate fully in their group responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the members.	A	C	A	C	B	D
(g) 1304.50(d)(1)(viii) The annual self-assessment of the grantee or delegate agency's progress in carrying out the programmatic and fiscal intent of its grant application, including planning or other actions that may result from the review of the annual audit and findings from the Federal monitoring review (see 45 CFR 1304.51(i)(1) for additional requirements about the annual self-assessment).	A	C	A	C	B	D
II. General Procedures						
(a) 1304.50(d)(1)(vi) The composition of the Policy Council or the Policy Committee and the procedures by which policy group members are chosen.	A & C	C	A & C	C	B	D
(b) 1304.50(g)(1) Grantee and delegate agencies must have written policies that define the roles and responsibilities of the governing body members and that inform them of the management procedures and functions necessary to implement a high quality program.	A & C	—	A & C	—	—	D
(c) 1304.50(d)(1)(ii) Procedures describing how the governing body and the appropriate policy group will implement shared decision-making.	A & C	C	A & C	C	D	D
(d) 1304.50(h) Internal dispute resolution. Each grantee and delegate agency and Policy Council or Policy Committee jointly must establish written procedures for resolving internal disputes, including impasse procedures, between the governing body and policy group.	A & C	C	A & C	C	D	D
(e) 1304.50(d)(2)(v) Establish and maintain procedures for hearing and working with the grantee or delegate agency to resolve community complaints about the program.	B	B	B	B	D	D

APPENDIX A—GOVERNANCE AND MANAGEMENT RESPONSIBILITIES—Continued

[A = General responsibility; B = Operating responsibility; C = Must approve or disapprove; D = Determined locally]

Function	Grantee Agency		Delegate Agency		Grantee or Delegate Management Staff	
	Governing Body	Policy Council	Governing Body	Policy Cmte.	HS* Program Director	Agency Director
(f) 1304.50(g)(2) Grantee and delegate agencies must ensure that appropriate internal controls are established and implemented to safeguard Federal funds in accordance with 45 CFR 1301.13.	A	—	A	—	D	D
(g) The annual independent audit that must be conducted in accordance with 45 CFR 1301.12.	A	—	A	—	D	D
III. Human Resources Management						
(a) 1304.50(d)(1)(ix) Program personnel policies and subsequent changes to those policies, in accordance with 45 CFR 1301.31, including standards of conduct for program staff, consultants, and volunteers.	A & C	C	A & C	C	D	D
(b) 1304.50(d)(1)(x) Decisions to hire or terminate the Early Head Start or Head Start director of the grantee agency.	A & C	C	—	—	—	D
(c) 1304.50(d)(1)(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the grantee agency.	A	C	—	—	B (Grantee only)	D
(d) 1304.50(d)(1)(x) Decisions to hire or terminate the Early Head Start or Head Start director of the delegate agency.	—	—	A & C	C	—	D
(e) 1304.50(d)(1)(xi) Decisions to hire or terminate any person who works primarily for the Early Head Start or Head Start program of the delegate agency.	—	—	A	C	B (Delegate only)	D

KEY AND DEFINITIONS AS USED IN CHART

*When a grantee or delegate agency operates an Early Head Start program only and not an Early Head Start and a Head Start program, these responsibilities apply to the Early Head Start Director.

A. General Responsibility. The group with legal and fiscal responsibility that guides and oversees the carrying out of the functions described through the individual or group given operating responsibility.

B. Operating Responsibility. The individual or group that is directly responsible for carrying out or performing the functions consistent with the general guidance and oversight from the group holding general responsibility.

C. Must Approve or Disapprove. The group that must be involved in the decision-making process prior to the point of seeking approval. If it does not approve, a proposal cannot be adopted, or the proposed action taken, until agreement is reached between the disagreeing groups.

D. Determined locally. Management staff functions as determined by the local governing body and in accordance with all Head Start regulations.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (f), (g), and (h).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

§ 1304.51 Management systems and procedures.

(a) *Program planning.* (1) Grantee and delegate agencies must develop and implement a systematic, ongoing process of program planning that includes consultation with the program's governing body, policy groups, and program staff, and with other community organizations that serve Early Head Start and

Head Start or other low-income families with young children. Program planning must include:

(i) An assessment of community strengths, needs and resources through completion of the Community Assessment, in accordance with the requirements of 45 CFR 1305.3;

(ii) The formulation of both multi-year (long-range) program goals and short-term program and financial objectives that address the findings of the Community Assessment, are consistent with the philosophy of Early Head Start and Head Start, and reflect the findings of the program's annual self-assessment; and

(iii) The development of written plan(s) for implementing services in each of the program areas covered by this part (e.g., Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management). See the requirements of 45 CFR parts 1305, 1306, and 1308.

(2) All written plans for implementing services, and the progress in meeting them, must be reviewed by the grantee or delegate agency staff and reviewed and approved by the Policy Council or Policy Committee at least annually, and must be revised and updated as needed.

(b) *Communications—general.* Grantee and delegate agencies must establish and implement systems to ensure that timely and accurate information is provided to parents, policy groups, staff, and the general community.

(c) *Communication with families.* (1) Grantee and delegate agencies must ensure that effective two-way comprehensive communications between staff and parents are carried out on a regular basis throughout the program year.

(2) Communication with parents must be carried out in the parents' primary or preferred language or through an interpreter, to the extent feasible.

(d) *Communication with governing bodies and policy groups.* Grantee and delegate agencies must ensure that the following information is provided regularly to their grantee and delegate governing bodies and to members of their policy groups:

(1) Procedures and timetables for program planning;

(2) Policies, guidelines, and other communications from HHS;

(3) Program and financial reports; and

(4) Program plans, policies, procedures, and Early Head Start and Head Start grant applications.

(e) *Communication among staff.* Grantee and delegate agencies must have mechanisms for regular communication among all program staff to facilitate quality outcomes for children and families.

(f) *Communication with delegate agencies.* Grantees must have a procedure for ensuring that delegate agency governing bodies, Policy Committees, and all staff receive all regulations, policies, and other pertinent communications in a timely manner.

(g) *Record-keeping systems.* Grantee and delegate agencies must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding children, families, and staff and must ensure appropriate confidentiality of this information.

(h) *Reporting systems.* Grantee and delegate agencies must establish and maintain efficient and effective reporting systems that:

(1) Generate periodic reports of financial status and program operations in order to control program quality, maintain program accountability, and advise governing bodies, policy groups, and staff of program progress; and

(2) Generate official reports for Federal, State, and local authorities, as required by applicable law.

(i) *Program self-assessment and monitoring.* (1) At least once each program year, with the consultation and participation of the policy groups and, as appropriate, other community members, grantee and delegate agencies must conduct a self-assessment of their effectiveness and progress in meeting program goals and objectives and in implementing Federal regulations.

(2) Grantees must establish and implement procedures for the ongoing monitoring of their own Early Head Start and Head Start operations, as well as those of each of their delegate agencies, to ensure that these operations effectively implement Federal regulations.

(3) Grantees must inform delegate agency governing bodies of any deficiencies in delegate agency operations identified in the monitoring review and must help them develop plans, including timetables, for addressing identified problems.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (a) and (i).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998]

§ 1304.52 Human resources management.

(a) *Organizational structure.* (1) Grantee and delegate agencies must establish and maintain an organizational structure that supports the accomplishment of program objectives. This structure must address the major functions and responsibilities assigned to each staff position and must provide evidence of adequate mechanisms for staff supervision and support.

(2) At a minimum, grantee and delegate agencies must ensure that the following program management functions are formally assigned to and adopted by staff within the program:

(i) Program management (the Early Head Start or Head Start director);

(ii) Management of early childhood development and health services, including child development and education; child medical, dental, and mental health; child nutrition; and, services for children with disabilities; and

(iii) Management of family and community partnerships, including parent activities.

(b) *Staff qualifications—general.* (1) Grantee and delegate agencies must ensure that staff and consultants have the knowledge, skills, and experience they need to perform their assigned functions responsibly.

(2) In addition, grantee and delegate agencies must ensure that only candidates with the qualifications specified in this part and in 45 CFR 1306.21 are hired.

(3) Current and former Early Head Start and Head Start parents must receive preference for employment vacancies for which they are qualified.

(4) Staff and program consultants must be familiar with the ethnic background and heritage of families in the program and must be able to serve and effectively communicate, to the extent feasible, with children and families with no or limited English proficiency.

(c) *Early Head Start or Head Start director qualifications.* The Early Head Start or Head Start director must have demonstrated skills and abilities in a management capacity relevant to human services program management.

(d) *Qualifications of content area experts.* Grantee and delegate agencies must hire staff or consultants who meet the qualifications listed below to provide content area expertise and oversight on an ongoing or regularly scheduled basis. Agencies must determine the appropriate staffing pattern necessary to provide these functions.

(1) Education and child development services must be supported by staff or consultants with training and experience in areas that include: The theories and principles of child growth and development, early childhood education, and family support. In addition, staff or consultants must meet the qualifications for classroom teachers, as specified in section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of teachers.

(2) Health services must be supported by staff or consultants with training and experience in public health, nursing, health education, maternal and child health, or health administration. In addition, when a health procedure must be performed only by a licensed/certified health professional, the agency must assure that the requirement is followed.

(3) Nutrition services must be supported by staff or consultants who are registered dietitians or nutritionists.

(4) Mental health services must be supported by staff or consultants who are licensed or certified mental health professionals with experience and expertise in serving young children and their families.

(5) Family and community partnership services must be supported by staff or consultants with training and experience in field(s) related to social, human, or family services.

(6) Parent involvement services must be supported by staff or consultants

with training, experience, and skills in assisting the parents of young children in advocating and decision-making for their families.

(7) Disabilities services must be supported by staff or consultants with training and experience in securing and individualizing needed services for children with disabilities.

(8) Grantee and delegate agencies must secure the regularly scheduled or ongoing services of a qualified fiscal officer.

(e) *Home visitor qualifications.* Home visitors must have knowledge and experience in child development and early childhood education; the principles of child health, safety, and nutrition; adult learning principles; and family dynamics. They must be skilled in communicating with and motivating people. In addition, they must have knowledge of community resources and the skills to link families with appropriate agencies and services.

(f) *Infant and toddler staff qualifications.* Early Head Start and Head Start staff working as teachers with infants and toddlers must obtain a Child Development Associate (CDA) credential for Infant and Toddler Caregivers or an equivalent credential that addresses comparable competencies within one year of the effective date of the final rule or, thereafter, within one year of hire as a teacher of infants and toddlers. In addition, infants and toddler teachers must have the training and experience necessary to develop consistent, stable, and supportive relationships with very young children. The training must develop knowledge of infant and toddler development, safety issues in infant and toddler care (e.g., reducing the risk of Sudden Infant Death Syndrome), and methods for communicating effectively with infants and toddlers, their parents, and other staff members.

(g) *Classroom staffing and home visitors.* (1) Grantee and delegate agencies must meet the requirements of 45 CFR 1306.20 regarding classroom staffing.

(2) When a majority of children speak the same language, at least one classroom staff member or home visitor interacting regularly with the children must speak their language.

(3) For center-based programs, the class size requirements specified in 45 CFR 1306.32 must be maintained through the provision of substitutes when regular classroom staff are absent.

(4) Grantee and delegate agencies must ensure that each teacher working exclusively with infants and toddlers has responsibility for no more than four infants and toddlers and that no more than eight infants and toddlers are placed in any one group. However, if State, Tribal or local regulations specify staff:child ratios and group sizes more stringent than this requirement, the State, Tribal or local regulations must apply.

(5) Staff must supervise the outdoor and indoor play areas in such a way that children's safety can be easily monitored and ensured.

(h) *Family child care providers.* (1) Head Start and Early Head Start grantee and delegate agencies must ensure that family child care providers have previous early child care experience and, at a minimum, enroll in a Child Development Associate (CDA) program or an Associates or Bachelor's degree program in child development or early childhood education within six months of beginning service provision. In addition, such grantee and delegate agencies must ensure that family child care providers acquire the CDA credential or Associate's or Bachelor's degree within two years of February 7, 2008 or, thereafter, within two years of beginning service provision.

(2) Family child care providers who enroll Head Start children must have the knowledge and skill necessary to develop consistent, stable, and supportive relationships with young children and their families, and sufficient knowledge to implement the Head Start Performance Standards and other applicable regulations.

(3) Grantee and delegate agencies offering the family child care option must ensure that closures of the family child care setting for reasons of emergency are minimized and that providers work with parents to establish alternate plans when emergencies do occur. Grantees and delegates must also ensure that the family child care

home advises parents of planned closures due to vacation, routine maintenance, or other reason well in advance.

(4) Substitute staff and assistant providers used in family child care must have necessary training and experience to ensure the continuous provision of quality services to children.

(5) At the time of hire, the child development specialist must have, at a minimum, an Associate degree in child development or early childhood education.

(6) Child development specialists must have knowledge and experience in areas that include the theories and principles of child growth and development, early childhood education (birth to age five), and family support. Child development specialists must have previous early childhood experience, familiarity with the Child Development Associate (CDA) competency standards and knowledge and understanding of the Head Start Program Performance Standards and other applicable regulations.

(i) *Standards of conduct.* (1) Grantee and delegate agencies must ensure that all staff, consultants, and volunteers abide by the program's standards of conduct. These standards must specify that:

(i) They will respect and promote the unique identity of each child and family and refrain from stereotyping on the basis of gender, race, ethnicity, culture, religion, or disability;

(ii) They will follow program confidentiality policies concerning information about children, families, and other staff members;

(iii) No child will be left alone or unsupervised while under their care; and

(iv) They will use positive methods of child guidance and will not engage in corporal punishment, emotional or physical abuse, or humiliation. In addition, they will not employ methods of discipline that involve isolation, the use of food as punishment or reward, or the denial of basic needs.

(2) Grantee and delegate agencies must ensure that all employees engaged in the award and administration of contracts or other financial awards sign statements that they will not solicit or accept personal gratuities, favors, or anything of significant monetary value from contractors or potential contractors.

(3) Personnel policies and procedures must include provision for appropriate penalties for violating the standards of conduct.

(j) *Staff performance appraisals.* Grantee and delegate agencies must, at a minimum, perform annual performance reviews of each Early Head Start and Head Start staff member and use the results of these reviews to identify staff training and professional development needs, modify staff performance agreements, as necessary, and assist each staff member in improving his or her skills and professional competencies.

(k) *Staff and volunteer health.* (1) Grantee and delegate agencies must assure that each staff member has an initial health examination (that includes screening for tuberculosis) and a periodic re-examination (as recommended by their health care provider or as mandated by State, Tribal, or local laws) so as to assure that they do not, because of communicable diseases, pose a significant risk to the health or safety of others in the Early Head Start or Head Start program that cannot be eliminated or reduced by reasonable accommodation. This requirement must be implemented consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(2) Regular volunteers must be screened for tuberculosis in accordance with State, Tribal or local laws. In the absence of State, Tribal or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings (see 45 CFR 1304.3(20) for a definition of volunteer).

(3) Grantee and delegate agencies must make mental health and wellness information available to staff with concerns that may affect their job performance.

(l) *Training and development.* (1) Grantee and delegate agencies must provide an orientation to all new staff, consultants, and volunteers that includes, at a minimum, the goals and underlying philosophy of Early Head Start and/or Head Start and the ways in which they are implemented by the program.

(2) Grantee and delegate agencies must establish and implement a structured approach to staff training and development, attaching academic credit whenever possible. This system should be designed to help build relationships among staff and to assist staff in acquiring or increasing the knowledge and skills needed to fulfill their job responsibilities, in accordance with the requirements of 45 CFR 1306.23.

(3) At a minimum, this system must include ongoing opportunities for staff to acquire the knowledge and skills necessary to implement the content of the Head Start Program Performance Standards. This program must also include:

(i) Methods for identifying and reporting child abuse and neglect that comply with applicable State and local laws using, so far as possible, a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers; and

(ii) Methods for planning for successful child and family transitions to and from the Early Head Start or Head Start program.

(4) Grantee and delegate agencies must provide training or orientation to Early Head Start and Head Start governing body members. Agencies must also provide orientation and ongoing training to Early Head Start and Head Start Policy Council and Policy Committee members to enable them to carry out their program governance responsibilities effectively.

(5) In addition, grantee and delegate agencies offering the family child care program option must make available to family child care providers training on:

(i) Infant, toddler, and preschool age child development;

(ii) Implementation of curriculum (see §1304.3(a)(5) for the definition of curriculum);

(iii) Skill development for working with children with disabilities;

(iv) Effective communication with infants, toddlers, and preschoolers and with their families;

(v) Safety, sanitation, hygiene, health practices and certification in, at minimum, infant and child cardiopulmonary resuscitation (CPR);

(vi) Identifying and reporting suspected child abuse or neglect;

(vii) United States Department of Agriculture's Child and Adult Care Food Program; and

(viii) Other areas necessary to increase the knowledge and skills of the family child care providers.

(Approved by the Office of Management and Budget under control number 0970–0148 for paragraph (j))

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998; 73 FR 1295, Jan. 8, 2008]

§ 1304.53 Facilities, materials, and equipment.

(a) *Head Start physical environment and facilities.* (1) Grantee and delegate agencies must provide a physical environment and facilities conducive to learning and reflective of the different stages of development of each child.

(2) Grantee and delegate agencies must provide appropriate space for the conduct of all program activities (see 45 CFR 1308.4 for specific access requirements for children with disabilities).

(3) The center space provided by grantee and delegate agencies must be organized into functional areas that can be recognized by the children and that allow for individual activities and social interactions.

(4) The indoor and outdoor space in Early Head Start or Head Start centers in use by mobile infants and toddlers must be separated from general walkways and from areas in use by preschoolers.

(5) Centers must have at least 35 square feet of usable indoor space per child available for the care and use of children (i.e., exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(6) Facilities owned or operated by Early Head Start and Head Start grantee or delegate agencies must meet the licensing requirements of 45 CFR 1306.30.

(7) Grantee and delegate agencies must provide for the maintenance, repair, safety, and security of all Early Head Start and Head Start facilities, materials and equipment.

(8) Grantee and delegate agencies must provide a center-based environment free of toxins, such as cigarette smoke, lead, pesticides, herbicides, and other air pollutants as well as soil and water contaminants. Agencies must ensure that no child is present during the spraying of pesticides or herbicides. Children must not return to the affected area until it is safe to do so.

(9) Outdoor play areas at center-based programs must be arranged so as to prevent any child from leaving the premises and getting into unsafe and unsupervised areas. Enroute to play areas, children must not be exposed to vehicular traffic without supervision.

(10) Grantee and delegate agencies must conduct a safety inspection, at least annually, to ensure that each facility's space, light, ventilation, heat, and other physical arrangements are consistent with the health, safety and developmental needs of children. At a minimum, agencies must ensure that:

(i) In climates where such systems are necessary, there is a safe and effective heating and cooling system that is insulated to protect children and staff from potential burns;

(ii) No highly flammable furnishings, decorations, or materials that emit highly toxic fumes when burned are used;

(iii) Flammable and other dangerous materials and potential poisons are stored in locked cabinets or storage facilities separate from stored medications and food and are accessible only to authorized persons. All medications, including those required for staff and volunteers, are labeled, stored under lock and key, refrigerated if necessary, and kept out of the reach of children;

(iv) Rooms are well lit and provide emergency lighting in the case of power failure;

(v) Approved, working fire extinguishers are readily available;

(vi) An appropriate number of smoke detectors are installed and tested regularly;

(vii) Exits are clearly visible and evacuation routes are clearly marked and posted so that the path to safety outside is unmistakable (see 45 CFR 1304.22 for additional emergency procedures);

(viii) Indoor and outdoor premises are cleaned daily and kept free of undesirable and hazardous materials and conditions;

(ix) Paint coatings on both interior and exterior premises used for the care of children do not contain hazardous quantities of lead;

(x) The selection, layout, and maintenance of playground equipment and surfaces minimize the possibility of injury to children;

(xi) Electrical outlets accessible to children prevent shock through the use of child-resistant covers, the installation of child-protection outlets, or the use of safety plugs;

(xii) Windows and glass doors are constructed, adapted, or adjusted to prevent injury to children;

(xiii) Only sources of water approved by the local or State health authority are used;

(xiv) Toilets and handwashing facilities are adequate, clean, in good repair, and easily reached by children. Toileting and diapering areas must be separated from areas used for cooking, eating, or children's activities;

(xv) Toilet training equipment is provided for children being toilet trained;

(xvi) All sewage and liquid waste is disposed of through a locally approved sewer system, and garbage and trash are stored in a safe and sanitary manner; and

(xvii) Adequate provisions are made for children with disabilities to ensure their safety, comfort, and participation.

(b) *Head Start equipment, toys, materials, and furniture.* (1) Grantee and delegate agencies must provide and arrange sufficient equipment, toys, materials, and furniture to meet the needs and facilitate the participation of children and adults. Equipment, toys, materials, and furniture owned or operated by the grantee or delegate agency must be:

(i) Supportive of the specific educational objectives of the local program;

(ii) Supportive of the cultural and ethnic backgrounds of the children;

(iii) Age-appropriate, safe, and supportive of the abilities and developmental level of each child served, with

adaptations, if necessary, for children with disabilities;

(iv) Accessible, attractive, and inviting to children;

(v) Designed to provide a variety of learning experiences and to encourage each child to experiment and explore;

(vi) Safe, durable, and kept in good condition; and

(vii) Stored in a safe and orderly fashion when not in use.

(2) Infant and toddler toys must be made of non-toxic materials and must be sanitized regularly.

(3) To reduce the risk of Sudden Infant Death Syndrome (SIDS), all sleeping arrangements for infants must use firm mattresses and avoid soft bedding materials such as comforters, pillows, fluffy blankets or stuffed toys.

Subpart E—Implementation and Enforcement

§ 1304.60 Deficiencies and quality improvement plans.

(a) Early Head Start and Head Start grantee and delegate agencies must comply with the requirements of this part in accordance with the effective date set forth in 45 CFR 1304.2.

(b) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or a Head Start grantee, determines that the grantee has one or more deficiencies, as defined in §1304.3(a)(6) of this part, and therefore also is in violation of the minimum requirements as defined in §1304.3(a)(14) of this part, he or she will notify the grantee promptly, in writing, of the finding, identifying the deficiencies to be corrected and, with respect to each identified deficiency, will inform the grantee that it must correct the deficiency either immediately or pursuant to a Quality Improvement Plan.

(c) An Early Head Start or Head Start grantee with one or more deficiencies to be corrected under a Quality Improvement Plan must submit to the responsible HHS official a Quality Improvement Plan specifying, for each identified deficiency, the actions that the grantee will take to correct the deficiency and the timeframe within which it will be corrected. In no case can the timeframes proposed in the Quality Improvement Plan exceed one year from the date that the grantee received official notification of the deficiencies to be corrected.

(d) Within 30 days of the receipt of the Quality Improvement Plan, the responsible HHS official will notify the Early Head Start or Head Start grantee, in writing, of the Plan's approval or specify the reasons why the Plan is disapproved.

(e) If the Quality Improvement Plan is disapproved, the Early Head Start or Head Start grantee must submit a revised Quality Improvement Plan, making the changes necessary to address the reasons that the initial Plan was disapproved.

(f) If an Early Head Start or Head Start grantee fails to correct a deficiency, either immediately, or within the timeframe specified in the approved Quality Improvement Plan, the responsible HHS official will issue a letter of termination or denial of refunding. Head Start grantees may appeal terminations and denials of refunding under 45 CFR part 1303, while Early Head Start grantees may appeal terminations and denials of refunding only under 45 CFR part 75. A deficiency that is not timely corrected shall be a material failure of a grantee to comply with the terms and conditions of an award within the meaning of 45 CFR 75.371 through 75.372.

(The information and collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0148 for paragraphs (b) and (c).)

[61 FR 57210, Nov. 5, 1996, as amended at 63 FR 2314, Jan. 15, 1998; 81 FR 3022, Jan. 20, 2016]

§ 1304.61 Noncompliance.

(a) If the responsible HHS official, as a result of information obtained from a review of an Early Head Start or Head Start grantee, determines that the grantee is not in compliance with Federal or State requirements (including, but not limited to, the Head Start Act or one or more of the regulations under parts 1301, 1304, 1305, 1306 or 1308 of this title) in ways that do not constitute a deficiency, he or she will notify the grantee promptly, in writing, of the finding, identifying the area or areas of noncompliance to be corrected and

specifying the period in which they must corrected.

(b) Early Head Start or Head Start grantees which have received written notification of an area of noncompliance to be corrected must correct the area of noncompliance within the time period specified by the responsible HHS official. A grantee which is unable or unwilling to correct the specified areas of noncompliance within the prescribed time period will be judged to have a deficiency which must be corrected, either immediately or pursuant to a Quality Improvement Plan (see 45 CFR 1304.3(a)(6)(iii) and 45 CFR 1304.60).

PART 1305—ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT AND ATTENDANCE IN HEAD START

Sec.

1305.1 Purpose and scope.
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AUTHORITY: 42 U.S.C. 9801 *et seq.*, 5 U.S.C. 553(b).

SOURCE: 57 FR 46725, Oct. 9, 1992, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part prescribes requirements for determining community needs and recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children in Head Start programs and explains the policy concerning the charging of fees by Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304, as applicable.

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996]

§ 1305.2 Definitions.

Accepted means a child or pregnant woman has met the eligibility criteria and has completed the enrollment process.

Children with disabilities means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term ''children with disabilities'' for children aged three to five, inclusive, may, at a state's discretion, include children experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

Enrolled means a child has been accepted and attended at least one class, has received at least one home visit, or has received at least one direct service while pending completion of necessary documentation for attendance in a center, based on state and local licensing requirements. For Early Head Start, enrollment includes all pregnant women that have been accepted and received at least one direct service.

Enrollment means the number of participants in an Early Head Start, a Head Start, a Migrant or Seasonal, or an American Indian Alaska Native Head Start program.

Enrollment opportunities mean vacancies that exist at the beginning of the enrollment year, or during the year because of children who leave the program, that must be filled for a program to achieve and maintain its funded enrollment.

Enrollment year means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

Family, for a child, means all persons living in the same household who are:

(1) Supported by the child's parent(s)' or guardian(s)' income; and

(2) Related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; or

(3) The child's authorized caregiver or legally responsible party.

Family, for a pregnant woman, means all persons who financially support the pregnant woman.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Funded enrollment means the number of children which the Head Start grantee is expected to serve, as indicated on the grant award.

Head Start eligible means a child or pregnant woman who meets the requirements for age and family income or categorical eligibility or, if applicable, the requirements established by a grantee under section 645(a)(2) of the Head Start Act or by a Head Start program operated by an Indian tribe under 45 CFR 1305.4(e). Unless otherwise noted, references to Head Start eligible include Early Head Start and Migrant or Seasonal Head Start programs.

Head Start program means a Head Start grantee or its delegate agency(ies).

Homeless children means the same as *homeless children and youths* in section 725(2) of the McKinney-Vento Homeless Assistance Act at 42 U.S.C. 11434a(2). The definition in this regulation also applies to Migrant or Seasonal Head Start programs.

Income means gross cash income and includes earned income, military income (including pay and allowances), veterans' benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185.

Income guidelines means the poverty line specified in section 637(19) of the Act (42 U.S.C. 9832).

Indian Tribe means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Low-income family means a family whose total income before taxes is equal to, or less than, the income guidelines.

Migrant family means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

Migrant or Seasonal Head Start Program means:

(1) With respect to services for migrant farmworkers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(2) With respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

Participant means a pregnant woman or a child who is enrolled in and receives services from a Head Start, an Early Head Start, a Migrant Seasonal Head Start, or an American Indian Alaska Native Head Start program.

Recruitment means the systematic ways in which a Head Start program identifies families whose children are eligible for Head Start services, informs them of the services available, and encourages them to apply for enrollment in the program.

Recruitment area means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

Relevant time period means:

(1) The 12 months preceding the month in which the application is submitted; or

(2) During the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

Responsible HHS official means the official of the U.S. Department of Health and Human Services having authority to make Head Start grant awards, or his or her designee.

Selection means the systematic process used to review all applications for Head Start services and to identify those children and families that are to be enrolled in the program.

Service area means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

Vacancy means an unfilled enrollment opportunity for a child and family in the Head Start program.

Verify or any variance of the word means to check or determine the correctness or truth by investigation or by reference.

[80 FR 7377, Feb. 10, 2015]

§ 1305.3 Determining community strengths and needs.

(a) Each Early Head Start grantee and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.

(b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.

(c) Each Early Head Start and Head Start grantee must conduct a Community Assessment within its service area once every three years. The Community Assessment must include the collection and analysis of the following information about the grantee's Early Head Start or Head Start area:

(1) The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

(2) Other child development and child care programs that are serving Head Start eligible children, including publicly funded State and local preschool programs, and the approximate number of Head Start eligible children served by each;

(3) The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies;

(4) Data regarding the education, health, nutrition and social service

needs of Head Start eligible children and their families;

(5) The education, health, nutrition and social service needs of Head Start eligible children and their families as defined by families of Head Start eligible children and by institutions in the community that serve young children;

(6) Resources in the community that could be used to address the needs of Head Start eligible children and their families, including assessments of their availability and accessibility.

(d) The Early Head Start and Head Start grantee and delegate agency must use information from the Community Assessment to:

(1) Help determine the grantee's philosophy, and its long-range and short-range program objectives;

(2) Determine the type of component services that are most needed and the program option or options that will be implemented;

(3) Determine the recruitment area that will be served by the grantee, if limitations in the amount of resources make it impossible to serve the entire service area.

(4) If there are delegate agencies, determine the recruitment area that will be served by the grantee and the recruitment area that will be served by each delegate agency.

(5) Determine appropriate locations for centers and the areas to be served by home-based programs; and

(6) Set criteria that define the types of children and families who will be given priority for recruitment and selection.

(e) In each of the two years following completion of the Community Assessment the grantee must conduct a review to determine whether there have been significant changes in the information described in paragraph (b) of this section. If so, the Community Assessment must be updated and the decisions described in paragraph (c) of this section must be reconsidered.

(f) The recruitment area must include the entire service area, unless the resources available to the Head Start grantee are inadequate to serve the entire service area.

(g) In determining the recruitment area when it does not include the entire service area, the grantee must:

(1) Select an area or areas that are among those having the greatest need for Early Head Start or Head Start services as determined by the Community Assessment; and

(2) Include as many Head Start eligible children as possible within the recruitment area, so that:

(i) The greatest number of Head Start eligible children can be recruited and have an opportunity to be considered for selection and enrollment in the Head Start program, and

(ii) The Head Start program can enroll the children and families with the greatest need for its services.

(The information collection requirements are approved by the Office of Management and Budget (OMB) under OMB Control Number 0970–0124 for paragraphs (b) and (d))

[57 FR 46725, Oct. 9, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 63 FR 2314, Jan. 15, 1998; 63 FR 12657, Mar. 16, 1998]

§ 1305.4 Determining, verifying, and documenting eligibility.

(a) *Process overview.* (1) Program staff must:

(i) Conduct an in-person interview with each family, unless paragraph (a)(2) of this section applies;

(ii) Verify information as required in paragraphs (h) through (j) of this section; and,

(iii) Create an eligibility determination record for each enrolled participant according to paragraph (l) of this section.

(2) Program staff may interview the family over the telephone if an in-person interview is not possible. In addition to meeting the criteria provided in paragraph (a)(1) of this section, program staff must note in the eligibility determination record reasons why the in-person interview was not possible.

(b) *Age eligibility requirements.* (1) For Early Head Start, except when the child is transitioning to Head Start, a child must be an infant or a toddler younger than three years old. A pregnant woman may be any age.

(2) For Head Start, a child must:

(i) Be at least three years old; or,

(ii) Turn three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located; and,

(iii) Not be older than compulsory school age.

(3) For Migrant or Seasonal Head Start, a child must be younger than compulsory school age by the date used to determine public school eligibility for the community in which the program is located.

(c) *Income eligibility requirements.* (1) A pregnant woman or a child is eligible, if:

(i) The family's income is equal to or below the poverty line; or,

(ii) The family is eligible or, in the absence of child care, would be potentially eligible for public assistance.

(2) If the family's income is above the poverty line, a program may enroll a pregnant woman or a child who would benefit from services. These participants can only make up to 10 percent of a program's enrollment in accordance with paragraph (d) of this section.

(d) *Additional allowances for programs.* (1) A program may enroll an additional 35 percent of participants whose families are neither income nor categorically eligible and whose family incomes are below 130 percent of the poverty line, if the program:

(i) Establishes and implements outreach, and enrollment policies and procedures to ensure it is meeting the needs of income or categorically eligible pregnant women, children, and children with disabilities, before serving ineligible pregnant women or children; and

(ii) Establishes criteria that ensures eligible pregnant women and children are served first.

(2) If a program chooses to enroll participants, who are neither income nor categorically eligible, and whose family incomes are between 100 and 130 percent of the poverty line, it must be able to report to the Head Start Regional Program Office:

(i) How it is meeting the needs of low-income families or families potentially eligible for public assistance, homeless children, and children in foster care, and include local demographic data on these populations;

(ii) Outreach and enrollment policies and procedures that ensure it is meeting the needs of income eligible or categorically eligible children or pregnant women, before serving over-income children or pregnant women;

(iii) Efforts, including outreach, to be fully enrolled with income eligible or categorically eligible pregnant women or children;

(iv) Policies, procedures, and selection criteria it uses to serve eligible children;

(v) Its current enrollment and its enrollment for the previous year;

(vi) The number of pregnant women and children served, disaggregated by whether they are either income or categorically eligible or meet the over-income requirements of paragraph (c)(2) of this section; and,

(vii) The eligibility criteria category of each child on the program's waiting list.

(e) *Additional Allowances for Indian tribes.* (1) Notwithstanding paragraph (c)(2) of this section, a tribal Head Start or Early Head Start program may fill more than10 percent of its enrollment with participants whose family incomes exceed the low-income guidelines or who are not categorically eligible, if:

(i) The program has served all pregnant women or children who wish to be enrolled from Indian and non-Indian families living on the reservation who either meet low-income guidelines or who are categorically eligible;

(ii) The program has served all pregnant women or children who wish to be enrolled from income-eligible or categorically-eligible Indian families native to the reservation, but living in non-reservation areas the tribe has approved as part of its service area;

(iii) The tribe has resources within its grant or from other non-Federal sources, without using additional funds from HHS intended to expand Early Head Start or Head Start services, to enroll pregnant women or children whose family incomes exceed low-income guidelines or who are not categorically eligible; and,

(iv) At least 51 percent of the program's participants are either income or categorically eligible.

(2) If another Early Head Start or Head Start program does not serve a non-reservation area, the program

must serve all income-eligible and categorically-eligible Indian and non-Indian pregnant women or children who wish to enroll before serving over-income pregnant women or children.

(3) A program that meets the conditions of this paragraph must annually set criteria that are approved by the policy council and the tribal council for selecting over-income pregnant women or children who would benefit from Early Head Start or Head Start services.

(f) *Categorical eligibility requirements.* (1) A family is categorically eligible for Head Start, if:

(i) The child is homeless, as defined in §1305.2; or,

(ii) The child is in foster care, as defined in §1305.2.

(2) If a program determines a child is categorically eligible under paragraph (f)(1)(i) of this section, it must allow the child to attend a Head Start program, without immunization and other medical records, proof of residency, birth certificates, or other documents. The program must give the family reasonable time to present these documents.

(g) *Migrant or Seasonal eligibility requirements.* A child is eligible for Migrant or Seasonal Head Start, if:

(1) The family meets an income eligibility requirement in paragraph (c) of this section; or

(2) The family meets a categorical requirement in paragraph (f) of this section; and

(3) The family's income comes primarily from agricultural work.

(h) *Verifying age.* Program staff must verify a child's age according to program policies and procedures. A program's policies and procedures cannot require staff to collect documents that confirm a child's age, if doing so creates a barrier for the family to enroll the child.

(i) *Verifying income.* (1) If the family can provide all W–2 forms, pay stubs, or pay envelopes for the relevant time period, program staff must:

(i) Use all family income for the relevant time period to determine eligibility according to income guidelines;

(ii) State the family income for the relevant time period; and

(iii) State whether the pregnant woman or child qualifies as low-income.

(2) If the family cannot provide all W–2 forms, pay stubs, or pay envelopes for the relevant time period, program staff may accept written statements from employers for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(3) If the family reports no income for the relevant time period, a program may:

(i) Accept the family's signed declaration to that effect, if program staff:

(A) Describes efforts made to verify the family's income; and,

(B) Explains how the family's total income was calculated; or,

(ii) Seeks information from third parties about the family's eligibility, if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (l)(2)(ii)(C) in this section.

(4) If a child moves from an Early Head Start program to a Head Start program, program staff must verify the family's income again.

(5) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

(j) *Verifying categorical eligibility.* (1) A family can prove categorical eligibility, with:

(i) A court order or other legal or government-issued document or a written statement from a government child welfare official demonstrating the child is in foster care;

(ii) A written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless or any other documentation that indicates homelessness, including documentation from a public or private agency, a declaration, information gathered on enrollment or application forms, or notes from an interview with staff to establish the child is homeless, as defined in §1305.2 or,

(iii) Any other document that establishes categorical eligibility.

(2) If a family can provide one of documents described in paragraph (j)(1) of this section, program staff must:

(i) Describe efforts made to verify the accuracy of the information provided; and,

(ii) State whether the family is categorically eligible.

(3) If a family cannot provide one of the documents described in paragraph (j)(1) of this section to prove the child is homeless, a program may accept the family's signed declaration to that effect, if, in a written statement, program staff:

(i) Describes the efforts made to verify that a child is homeless, as defined in §1305.2; and,

(ii) Describes the child's living situation, including the specific condition described in §1305.2 under which the child was determined to be homeless.

(4) Program staff may seek information from third parties who have firsthand knowledge about a family's categorical eligibility, if the family gives consent. If the family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (l)(2)(ii)(C) in this section.

(k) *Eligibility duration.* (1) If a child is determined eligible under this section and is participating in a Head Start program, he or she will remain eligible through the end of the succeeding program year.

(2) If a program operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start services until enrolled in school.

(l) *Records.* (1) A program must keep eligibility determination records for each participant and on-going training records for program staffs. A program may keep these records electronically.

(2) Each eligibility determination record must include:

(i) Copies of any documents or statements, including declarations, that are deemed necessary to verify eligibility under paragraphs (h) through (j) of this section;

(ii) A statement that program staff has made reasonable efforts to verify information by:

(A) Conducting either an in-person, or a telephonic interview with the family as described under paragraph (a) of this section;

(B) Describing efforts made to verify eligibility, as required under paragraphs (h) through (j) of this section; and,

(C) Collecting documents required for third party verification under paragraphs (i)(3)(ii) and (j)(4) of this section, that includes:

(*1*) The family's written consent to contact each third party;

(*2*) The third parties' names, titles, and affiliations; and,

(*3*) Information from third parties regarding the family's eligibility.

(iii) A statement that identifies whether:

(A) The family's income is below income guidelines for its size, and lists the family's size;

(B) The family is eligible for or, in the absence of child care, potentially eligible for public assistance;

(C) The child is homeless child, as defined at §1305.2 including the specific condition described in §1305.2 under which the child was determined to be homeless;

(D) The child is in foster care;

(E) The family meets the over-income requirement in paragraph (c)(2) of this section; or,

(F) The family meets alternative criteria under paragraph (d) of this section.

(3) A program must keep eligibility determination records:

(i) For those currently enrolled, as long as they are enrolled; and,

(ii) For one year after they have either stopped receiving services; or,

(iii) Are no longer enrolled.

(m) *Program policies and procedures on violating eligibility determination regulations.* A program must establish policies and procedures that describe all actions taken against staff who intentionally violate Federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive

Early Head Start or Head Start services.

(n) *Training.* (1) A program must train all governing body, policy council, management, and staff who determine eligibility on applicable Federal regulations and program policies and procedures. Training must, at a minimum:

(i) Include methods on how to collect complete and accurate eligibility information from families and third party sources;

(ii) Incorporate strategies for treating families with dignity and respect and for dealing with possible issues of domestic violence, stigma, and privacy; and,

(iii) Explain program policies and procedures that describe actions taken against staff, families, or participants who intentionally attempt to provide or provide false information.

(2) A program must train management and staff members who make eligibility determinations within 90 days following the effective date of this rule, and as soon as possible, but within 90 days of hiring new staff after the initial training has been conducted.

(3) A program must train all governing body and policy council members within 180 days following the effective date of this rule, and within 180 days of the beginning of the term of a new governing body or policy council member after the initial training has been conducted.

(4) A program must develop policies on how often training will be provided after the initial training.

[80 FR 7378, Feb. 10, 2015]

§ 1305.5 Recruitment of children.

(a) In order to reach those most in need of Head Start services, each Head Start grantee and delegate agency must develop and implement a recruitment process that is designed to actively inform all families with Head Start eligible children within the recruitment area of the availability of services and encourage them to apply for admission to the program. This process may include canvassing the local community, use of news releases and advertising, and use of family referrals and referrals from other public and private agencies.

(b) During the recruitment process that occurs prior to the beginning of the enrollment year, a Head Start program must solicit applications from as many Head Start eligible families within the recruitment area as possible. If necessary, the program must assist families in filling out the application form in order to assure that all information needed for selection is completed.

(c) Each program, except migrant programs, must obtain a number of applications during the recruitment process that occurs prior to the beginning of the enrollment year that is greater than the enrollment opportunities that are anticipated to be available over the course of the next enrollment year in order to select those with the greatest need for Head Start services.

§ 1305.6 Selection process.

(a) Each Head Start program must have a formal process for establishing selection criteria and for selecting children and families that considers all eligible applicants for Head Start services. The selection criteria must be based on those contained in paragraphs (b) and (c) of this section.

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

(c) At least 10 percent of the total number of enrollment opportunities in each grantee and each delegate agency during an enrollment year must be made available to children with disabilities who meet the definition for children with disabilities in § 1305.2(a). An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there

was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start in conjunction with other providers.

(d) Each Head Start program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria to assure that eligible children enter the program as vacancies occur.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.7 Enrollment and re-enrollment.

(a) Each child enrolled in a Head Start program, except those enrolled in a migrant program, must be allowed to remain in Head Start until kindergarten or first grade is available for the child in the child's community, except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(b) A Head Start grantee must maintain its funded enrollment level. When a program determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. A program may elect not to fill a vacancy when 60 calendar days or less remain in the program's enrollment year.

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

[57 FR 46725, Oct. 9, 1992, as amended at 63 FR 12658, Mar. 16, 1998]

§ 1305.8 Attendance.

(a) When the monthly average daily attendance rate in a center-based program falls below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis must include a study of the pattern of absences for each child, including the reasons for absences as well as the number of absences that occur on consecutive days.

(b) If the absences are a result of illness or if they are well documented absences for other reasons, no special action is required. If, however, the absences result from other factors, including temporary family problems that affect a child's regular attendance, the program must initiate appropriate family support procedures for all children with four or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents. Contacts with the family must emphasize the benefits of regular attendance, while at the same time remaining sensitive to any special family circumstances influencing attendance patterns. All contacts with the child's family as well as special family support service activities provided by program staff must be documented.

(c) In circumstances where chronic absenteeism persists and it does not seem feasible to include the child in either the same or a different program option, the child's slot must be considered an enrollment vacancy.

§ 1305.9 Policy on fees.

A Head Start program must not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in the program. If the family of a child determined to be eligible for participation by a Head Start program volunteers to pay part or all

of the costs of the child's participation, the Head Start program may accept the voluntary payments and record the payments as program income.

Under no circumstances shall a Head Start program solicit, encourage, or in any other way condition a child's enrollment or participation in the program upon the payment of a fee.

§ 1305.10 Compliance.

A grantee's failure to comply with the requirements of this Part may result in a denial of refunding or termination in accordance with 45 CFR part 1303.

PART 1306—HEAD START STAFFING REQUIREMENTS AND PROGRAM OPTIONS

Subpart A—General

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AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 57 FR 58092, Dec. 8, 1992, unless otherwise noted.

Subpart A—General

§ 1306.1 Purpose and scope.

This Part sets forth requirements for Early Head Start and Head Start program staffing and program options that all Early Head Start and Head Start grantee and delegate agencies, with the exception of Parent Child Center programs, must meet. The exception for Parent Child Centers is for fiscal years 1995, 1996, and 1997 as consistent with section 645A(e)(2) of the Head Start Act, as amended. These requirements, including those pertaining to staffing patterns, the choice of the program options to be implemented and the acceptable ranges in the implementation of those options, have been developed to help maintain and improve the quality of Early Head Start and Head Start and to help promote lasting benefits to the children and families being served. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR Part 1304, as applicable.

[61 FR 57226, Nov. 5, 1996]

§ 1306.2 Effective dates.

(a) Except as provided in paragraph (b) of this section, Head Start grantees funded or refunded after June 7, 1993, must comply with these requirements by such times in their grant cycles as new groups of children begin receiving services. This does not preclude grantees from voluntarily coming into compliance with these regulations prior to the effective date.

(b) With respect to the requirements of §1306.32(b)(2), grantees that are currently operating classes in double session center-based options for less than three and a half hours per day, but for at least three hours per day, may continue to do so until September 1, 1995, at which time they must comply with the three and one-half hour minimum class time requirement.

§ 1306.3 Definitions.

(a) *Center-based program option* means Head Start services provided to children primarily in classroom settings.

(b) *Combination program option* means Head Start services provided to children in both a center setting and through intensive work with the child's parents and family at home.

(c) *Days of operation* means the planned days during which children will be receiving direct Head Start component services in a classroom, on a field trip or on trips for health-related activities, in group socialization

or when parents are receiving a home visit.

(d) *Double session variation* means a variation of the center-based program option that operates with one teacher who works with one group of children in a morning session and a different group of children in an afternoon session.

(e) *Full-day variation* means a variation of the center-based program option in which program operations continue for longer than six hours per day.

(f) *Group socialization activities* means the sessions in which children and parents enrolled in the home-based or combination program option interact with other home-based or combination children and parents in a Head Start classroom, community facility, home, or on a field trip.

(g) *Head Start class* means a group of children supervised and taught by two paid staff members (a teacher and a teacher aide or two teachers) and, where possible, a volunteer.

(h) *Head Start parent* means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.

(i) *Head Start program* is one operated by a Head Start grantee or delegate agency.

(j) *Home-based program option* means Head Start services provided to children, primarily in the child's home, through intensive work with the child's parents and family as the primary factor in the growth and development of the child.

(k) *Home visits* means the visits made to a child's home by the class teacher in a center-based program option, or home visitors in a home-based program option, for the purpose of assisting parents in fostering the growth and development of their child.

(l) *Hours of operation* means the planned hours per day during which children and families will be receiving direct Head Start component services in a classroom, on a field trip, while receiving medical or dental services, or during a home visit or group socialization activity. Hours of operation do not include travel time to and from the center at the beginning and end of a session.

(m) *Parent-teacher conference* means the meeting held at the Head Start center between the child's teacher and the child's parents during which the child's progress and accomplishments are discussed.

(n) *Family child care* is care and education provided to children in a private home or other family-like setting. *Head Start family child care* means Head Start and Early Head Start comprehensive services provided to a small group of children through their enrollment in family child care.

(o) *Family child care program option* means Head Start and Early Head Start and child care services provided to children receiving child care primarily in the home of a family child care provider or other family-like setting, such as space in a public housing complex which has been licensed by the state and set aside specifically for the provision of or purpose of providing family child care.

(p) *Family child care provider* means the provider of Early Head Start or Head Start services in his or her place of residence or in another family-like setting.

[57 FR 58092, Dec. 8, 1992, as amended at 73 FR 1296, Jan. 8, 2008]

Subpart B—Head Start Program Staffing Requirements

§ 1306.20 Program staffing patterns.

(a) Grantees must meet the requirements of 45 CFR 1304.52(g), Classroom staffing and home visitors, in addition to the requirements of this Section.

(b) Grantees must provide adequate supervision of their staff.

(c) Grantees operating center-based program options must employ two paid staff persons (a teacher and a teacher aide or two teachers) for each class. Whenever possible, there should be a third person in the classroom who is a volunteer.

(d) Grantees operating home-based program options must employ home visitors responsible for home visits and group socialization activities.

(e) Grantees operating a combination program option must employ, for their

classroom operations, two paid staff persons, a teacher and a teacher aide or two teachers, for each class. Whenever possible, there should be a third person in the classroom who is a volunteer. They must employ staff for home visits who meet the qualifications the grantee requires for home visitors.

(f) Classroom staff and home visitors must be able to communicate with the families they serve either directly or through a translator. They should also be familiar with the ethnic background of these families.

(g) Grantee and delegate agencies offering the family child care program option must ensure that in each family child care home where Head Start children are enrolled, the group size does not exceed the limits specified in this paragraph. Whenever present, not at school or with another care provider, the family child care provider's own children under the age of six years must be included in the count.

(1) When there is one family child care provider, the maximum group size is six children and no more than two of the six may be under two years of age. When there is a provider and an assistant, the maximum group size is twelve children with no more than four of the twelve children under two years of age.

(2) One family child care provider may care for up to four infants and toddlers, with no more than two of the four children under the age of 18 months.

(3) Additional assistance or smaller group size may be necessary when serving children with special needs who require additional care.

(h)(1) Grantee and delegate agencies offering the family child care program option must provide support for family child care providers through a child development specialist or other Head Start or delegate agency staff member with responsibilities related to the provision of comprehensive Head Start and Early Head Start services.

(2) The grantee or delegate agency will assign responsibilities to the child development specialist and other agency staff to support and ensure the provision of quality Head Start services at each family child care home. These responsibilities must include both regular announced and unannounced visits to each home. The duration and timing of such visits will be planned in accordance with the needs of each home but shall occur not less than once every two weeks.

(3) During visits to family child care homes the child development specialist will periodically verify compliance with either contract requirements or agency policy depending on the nature of the relationship; facilitate ongoing communication between grantee or delegate agency staff, family child care providers, and Head Start and Early Head Start families; provide recommendations for technical assistance; and support the family child care provider in developing collegial or mentoring relationships with other child care professionals.

(i) Head Start, Early Head Start and delegate agencies must ensure that children in the Head Start family child care option receive comprehensive services as specified in 45 CFR parts 1304 and 1308.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 73 FR 1296, Jan. 8, 2008]

§ 1306.21 Staff qualification requirements.

Head Start programs must comply with section 648A of the Head Start Act and any subsequent amendments regarding the qualifications of classroom teachers.

[61 FR 57226, Nov. 5, 1996]

§ 1306.22 Volunteers.

(a) Head Start programs must use volunteers to the fullest extent possible. Head Start grantees must develop and implement a system to actively recruit, train and utilize volunteers in the program.

(b) Special efforts must be made to have volunteer participation, especially parents, in the classroom and during group socialization activities.

§ 1306.23 Training.

(a) Head Start grantees must provide pre-service training and in-service training opportunities to program staff and volunteers to assist them in acquiring or increasing the knowledge and skills they need to fulfill their job responsibilities. This training must be

directed toward improving the ability of staff and volunteers to deliver services required by Head Start regulations and policies.

(b) Head Start grantees must provide staff with information and training about the underlying philosophy and goals of Head Start and the program options being implemented.

Subpart C—Head Start Program Options

§ 1306.30 Provisions of comprehensive child development services.

(a) All Head Start grantees must provide comprehensive child development services, as defined in the Head Start Performance Standards.

(b) All Head Start grantees must provide classroom or group socialization activities for the child as well as home visits to the parents. The major purpose of the classroom or socialization activities is to help meet the child's development needs and to foster the child's social competence. The major purpose of the home visits is to enhance the parental role in the growth and development of the child.

(c) The facilities used by Early Head Start and Head Start grantee and delegate agencies for regularly scheduled center-based and combination program option classroom activities or home-based group socialization activities must comply with State and local requirements concerning licensing. In cases where these licensing standards are less comprehensive or less stringent than the Head Start regulations, or where no State or local licensing standards are applicable, grantee and delegate agencies are required to assure that their facilities are in compliance with the Head Start Program Performance Standards related to health and safety as found in 45 CFR 1304.53(a), Physical environment and facilities.

(d) All grantees must identify, secure and use community resources in the provision of services to Head Start children and their families prior to using Head Start funds for these services.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57226, Nov. 5, 1996; 63 FR 2314, Jan. 15, 1998]

§ 1306.31 Choosing a Head Start program option.

(a) Grantees may choose to implement one or more than one of four program options: a center-based option, a home-based program option, a combination program option, or a family child care option.

(b) The program option chosen must meet the needs of the children and families as indicated by the community needs assessment conducted by the grantee.

(c) When assigning children to a particular program option, Head Start grantees that operate more than one program option must consider such factors as the child's age, developmental level, disabilities, health or learning problems, previous preschool experiences and family situation. Grantees must also consider parents' concerns and wishes prior to making final assignments.

[57 FR 58092, Dec. 8, 1992, as amended at 73 FR 1296, Jan. 8, 2008]

§ 1306.32 Center-based program option.

(a) *Class size.* (1) Head Start classes must be staffed by a teacher and an aide or two teachers and, whenever possible, a volunteer.

(2) Grantees must determine their class size based on the predominant age of the children who will participate in the class and whether or not a center-based double session variation is being implemented.

(3) For classes serving predominantly four or five-year-old children, the average class size of that group of classes must be between 17 and 20 children, with no more than 20 children enrolled in any one class.

(4) When double session classes serve predominantly four or five-year-old-children, the average class size of that group of classes must be between 15 and 17 children. A double session class for four or five-year old children may have no more than 17 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(5) For classes serving predominantly three-year-old children, the average class size of that group of classes must be between 15 and 17 children, with no

more than 17 children enrolled in any one class.

(6) When double session classes serve predominantly three-year-old children, the average class size of that group of classes must be between 13 and 15 children. A double session class for three-year-old children may have no more than 15 children enrolled. (See paragraph (c) of this section for other requirements regarding the double session variation.)

(7) It is recommended that at least 13 children be enrolled in each center-based option class where feasible.

(8) A class is considered to serve predominantly four- or five-year-old children if more than half of the children in the class will be four or five years old by whatever date is used by the State or local jurisdiction in which the Head Start program is located to determine eligibility for public school.

(9) A class is considered to serve predominantly three-year-old children if more than half of the children in the class will be three years old by whatever date is used by the State or local jurisdiction in which Head Start is located to determine eligibility for public school.

(10) Head Start grantees must determine the predominant age of children in the class at the start of the year. There is no need to change that determination during the year.

(11) In some cases, State or local licensing requirements may be more stringent than these class requirements, preventing the required minimum numbers of children from being enrolled in the facility used by Head Start. Where this is the case, Head Start grantees must try to find alternative facilities that satisfy licensing requirements for the numbers of children cited above. If no alternative facilities are available, the responsible HHS official has the discretion to approve enrollment of fewer children than required above.

(12) The chart below may be used for easy reference:

Predominant age of children in the class	Funded class size [Funded enrollment]
4 and 5 year olds	Program average of 17–20 children enrolled per class in these classes. No more than 20 children enrolled in any class.
4 and 5 year olds in double session classes.	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds	Program average of 15–17 children enrolled per class in these classes. No more than 17 children enrolled in any class.
3 year olds in double session classes.	Program average of 13–15 children enrolled per class in these classes. No more than 15 children enrolled in any class.

(b) *Center-based program option requirements.* (1) Classes must operate for four or five days per week or some combination of four and five days per week.

(2) Classes must operate for a minimum of three and one-half to a maximum of six hours per day with four hours being optimal.

(3) The annual number of required days of planned class operations (days when children are scheduled to attend) is determined by the number of days per week each program operates. Programs that operate for four days per week must provide at least 128 days per year of planned class operations. Programs that operate for five days per week must provide at least 160 days per year of planned class operations. Grantees implementing a combination of four and five days per week must plan to operate between 128 and 160 days per year. The minimum number of planned days of service per year can be determined by computing the relative number of four and five day weeks that the program is in operation. All center-based program options must provide a minimum of 32 weeks of scheduled days of class operations over an eight or nine month period. Every effort should be made to schedule makeup classes using existing resources if planned class days fall below the number required per year.

(4) Programs must make a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather

or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate makeup classes and provide these classes, when needed, to prevent the number of days of service available to the children from falling below 128 days per year.

(5) Each individual child is not required to receive the minimum days of service, although this is to be encouraged in accordance with Head Start policies regarding attendance. The minimum number of days also does not apply to children with disabilities whose individualized education plan may require fewer planned days of service in the Head Start program.

(6) Head Start grantees operating migrant programs are not subject to the requirement for a minimum number of planned days, but must make every effort to provide as many days of service as possible to each migrant child and family.

(7) Staff must be employed for sufficient time to allow them to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to conduct home visits, to conduct health examinations, screening and immunization activities, to maintain records, and to keep service component plans and activities current and relevant. These activities should take place outside of the time scheduled for classes in center-based programs or home visits in home-based programs.

(8) Head Start grantees must develop and implement a system that actively encourages parents to participate in two home visits annually for each child enrolled in a center-based program option. These visits must be initiated and carried out by the child's teacher. The child may not be dropped from the program if the parents will not participate in the visits.

(9) Head Start grantees operating migrant programs are required to plan for a minimum of two parent-teacher conferences for each child during the time they serve that child. Should time and circumstance allow, migrant programs must make every effort to conduct home visits.

(c) *Double session variation.* (1) A center-based option with a double session variation employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon. Because of the larger number of children and families to whom the teacher must provide services, double session program options must comply with the requirements regarding class size explained in paragraph (a) of this section and with all other center-based requirements in paragraph (b) of this section with the exceptions and additions noted in paragraphs (c) (2) and (3) of this section.

(2) Each program must operate classes for four days per week.

(3) Each double session classroom staff member must be provided adequate break time during the course of the day. In addition, teachers, aides and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment and to give individual attention to children entering and leaving the center.

(d) *Full day variation.* (1) A Head Start grantee implementing a center-based program option may operate a full day variation and provide more than six hours of class operations per day using Head Start funds. These programs must comply with all the requirements regarding the center-based program option found in paragraphs (a) and (b) of this section with the exception of paragraph (b)(2) regarding the hours of service per day.

(2) Programs are encouraged to meet the needs of Head Start families for full day services by securing funds from other agencies. Before implementing a full day variation of a center-based option, a Head Start grantee should demonstrate that alternative enrollment opportunities or funding from non-Head Start sources are not available for Head Start families needing full-day child care services.

(3) Head Start grantees may provide full day services only to those children and families with special needs that justify full day services or to those children whose parents are employed or in job training with no caregiver present in the home. The records of each child receiving services for more than six hours per day must show how

each child meets the criteria stated above.

(e) Non-Head Start services. Grantees may charge for services which are provided outside the hours of the Head Start program.

§ 1306.33 Home-based program option.

(a) Grantees implementing a home-based program option must:

(1) Provide one home visit per week per family (a minimum of 32 home visits per year) lasting for a minimum of 1 and ½ hours each.

(2) Provide, at a minimum, two group socialization activities per month for each child (a minimum of 16 group socialization activities each year).

(3) Make up planned home visits or scheduled group socialization activities that were canceled by the grantee or by program staff when this is necessary to meet the minimums stated above. Medical or social service appointments may not replace home visits or scheduled group socialization activities.

(4) Allow staff sufficient employed time to participate in pre-service training, to plan and set up the program at the start of the year, to close the program at the end of the year, to maintain records, and to keep component and activities plans current and relevant. These activities should take place when no home visits or group socialization activities are planned.

(5) Maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(b) Home visits must be conducted by trained home visitors with the content of the visit jointly planned by the home visitor and the parents. Home visitors must conduct the home visit with the participation of parents. Home visits may not be conducted by the home visitor with only babysitters or other temporary caregivers in attendance.

(1) The purpose of the home visit is to help parents improve their parenting skills and to assist them in the use of the home as the child's primary learning environment. The home visitor must work with parents to help them provide learning opportunities that enhance their child's growth and development.

(2) Home visits must, over the course of a month, contain elements of all Head Start program components. The home visitor is the person responsible for introducing, arranging and/or providing Head Start services.

(c) Group socialization activities must be focused on both the children and parents. They may not be conducted by the home visitor with babysitters or other temporary caregivers.

(1) The purpose of these socialization activities for the children is to emphasize peer group interaction through age appropriate activities in a Head Start classroom, community facility, home, or on a field trip. The children are to be supervised by the home visitor with parents observing at times and actively participating at other times.

(2) These activities must be designed so that parents are expected to accompany their children to the group socialization activities at least twice each month to observe, to participate as volunteers or to engage in activities designed specifically for the parents.

(3) Grantees must follow the nutrition requirements specified in 45 CFR 1304.23(b)(2) and provide appropriate snacks and meals to the children during group socialization activities.

[57 FR 58092, Dec. 8, 1992, as amended at 61 FR 57227, Nov. 5, 1996]

§ 1306.34 Combination program option.

(a) *Combination program option requirements:* (1) Grantees implementing a combination program option must provide class sessions and home visits that result in an amount of contact with children and families that is, at a minimum, equivalent to the services provided through the center-based program option or the home-based program option.

(2) Acceptable combinations of minimum number of class sessions and corresponding number of home visits are shown below. Combination programs must provide these services over a period of 8 to 12 months.

Number of class sessions	Number of home visits
96	8
92–95	9
88–91	10
84–87	11
80–83	12

Number of class sessions	Number of home visits
76–79	13
72–75	14
68–71	15
64–67	16
60–63	17
56–59	18
52–55	19
48–51	20
44–47	21
40–43	22
36–39	23
32–35	24

(3) The following are examples of various configurations that are possible for a program that operates for 32 weeks:

- A program operating classes three days a week and providing one home visit a month (96 classes and 8 home visits a year);
- A program operating classes two days a week and providing two home visits a month (64 classes and 16 home visits a year);
- A program operating classes one day a week and providing three home visits a month (32 classes and 24 home visits a year).

(4) Grantees operating the combination program option must make a reasonable estimate of the number of days during a year that centers may be closed due to problems such as inclement weather or illness, based on their experience in previous years. Grantees must make provisions in their budgets and program plans to operate make-up classes up to the estimated number, and provide these classes, when necessary, to prevent the number of days of classes from falling below the number required by paragraph (a)(2) of this section. Grantees must make up planned home visits that were canceled by the program or by the program staff if this is necessary to meet the minimums required by paragraph (a)(2) of this section. Medical or social service appointments may not replace home visits.

(b) *Requirements for class sessions:* (1) Grantees implementing the combination program option must comply with the class size requirements contained in §1306.32(a).

(2) The provisions of the following sections apply to grantees operating the combination program option: §1306.32(b) (2), (5), (6), (7) and (9).

(3) If a grantee operates a double session or a full day variation, it must meet the provisions concerning double-sessions contained in §1306.32(c)(1) and (3) and the provisions for the center-based program option's full day variation found in §1306.32(d).

(c) *Requirements for home visits:* (1) Home visits must last for a minimum of 1 and ½ hours each.

(2) The provisions of the following section, concerning the home-based program option, must be adhered to by grantees implementing the combination program option: §1306.33(a) (4) and (5); and §1306.33(b).

§1306.35 Family child care program option.

(a) *Grantee and delegate agency implementation.* Grantee and delegate agencies offering the family child care program option must:

(1) *Hours of operation.* Ensure that the family child care option, whether provided directly or via contractual arrangement, operates sufficient hours to meet the child care needs of families.

(2) *Serving children with disabilities.* (i) Ensure the availability of family child care homes capable of serving children and families with disabilities affecting mobility as appropriate; and

(ii) Ensure that children with disabilities enrolled in family child care are provided services which support their participation in the early intervention, special education, and related services required by their individual family service plan (IFSP) or individual education plan (IEP) and that the child's teacher has appropriate knowledge, training, and support.

(3) *Program Space-indoor and outdoor.* Ensure that each family child care home has sufficient indoor and outdoor space which is usable and available to children. This space must be adequate to allow children to be supervised and safely participate in developmentally appropriate activities and routines that foster their cognitive, socio-emotional, and physical development, including both gross and fine motor. Family child care settings must meet State family child care regulations.

(4) *Policy Council role.* The Policy Council must approve or disapprove the addition of family child care as a Head Start or Early Head Start program option. When families are enrolled in the Head Start or Early Head Start family

child care program option, they must have proportionate representation on the Policy Council or policy committee.

(b)*Facilities*—(1) *Safety plan*. Grantees and delegate agencies offering the family child care program option must ensure the health and safety of children enrolled. The family child care home must have a written description of its health, safety, and emergency policies and procedures, and a system for routine inspection to ensure ongoing safety.

(2) *Injury prevention*. Grantee and delegate agencies must ensure that:

(i) Children enrolled in the Head Start family child care program option are protected from potentially hazardous situations. Providers must ensure that children are safe from the potential hazards posed by appliances (stove, refrigerator, microwave, etc). Premises must be free from pests and the use of chemicals or other potentially harmful materials for controlling pests must not occur while children are on premises.

(ii) Grantee and delegate agencies must ensure that all sites attended by children enrolled in Head Start and Early Head Start are equipped with functioning and properly located smoke and carbon monoxide detectors.

(iii) Radon detectors are installed in family child care homes where there is a basement and such detectors are recommended by local health officials;

(iv) Children are supervised at all times. Providers must have systems for assuring the safety of any child not within view for any period (e.g. the provider needs to use the bathroom or an infant is napping in one room while toddlers play in another room);

(v) Providers ensure the safety of children whenever any body of water, road, or other potential hazard is present and when children are being transported;

(vi) Unsupervised access by children to all water hazards, such as pools or other bodies of water, are prevented by a fence;

(vii) There are no firearms or other weapons kept in areas occupied or accessible to children;

(viii) Alcohol and other drugs are not consumed while children are present or accessible to children at any time; and

(ix) Providers secure health certificates for pets to document up to date immunizations and freedom from any disease or condition that poses a threat to children's health. Family child care providers must ensure that pets are appropriately managed to ensure child safety at all times.

(c) *Emergency plans*. Grantee and delegate agencies offering the family child care option must ensure that providers have made plans to notify parents in the event of any emergency or unplanned interruption of service. The provider and parent together must develop contingency plans for emergencies. Such plans may include, but are not limited to, the use of alternate providers or the availability of substitute providers. Parents must be informed that they may need to pick the child up and arrange care if the child becomes ill or if an emergency arises.

(d) *Licensing requirements*. Head Start programs offering the family child care option must ensure that family child care providers meet State, Tribal, and local licensing requirements and possess a license or other document certifying that those requirements have been met. When State, Tribal, or local requirements vary from Head Start requirements, the most stringent provision takes precedence.

[73 FR 1296, Jan. 8, 2008]

§ 1306.36 Additional Head Start program option variations.

In addition to the center-based, home-based, combination programs, and family child care options defined in this part, the Director of the Office of Head Start retains the right to fund alternative program variations to meet the unique needs of communities or to demonstrate or test alternative approaches for providing Head Start services.

[73 FR 1296, Jan. 8, 2008]

§ 1306.37 Compliance waiver.

An exception to one or more of the requirements contained in §§ 1306.32, 1306.33, 1306.34, and 1306.35 will be

granted only if the Director of the Office of Head Start determines, on the basis of supporting evidence, that the grantee made a reasonable effort to comply with the requirement but was unable to do so because of limitations or circumstances of a specific community or communities served by the grantee.

[73 FR 1296, Jan. 8, 2008]

PART 1307—POLICIES AND PROCEDURES FOR DESIGNATION RENEWAL OF HEAD START AND EARLY HEAD START GRANTEES

Sec.

1307.1 Purpose and scope.
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1307.8 Use of CLASS: Pre-K Instrument in the Designation Renewal System.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 76 FR 70029, Nov. 9, 2011, unless otherwise noted.

§ 1307.1 Purpose and scope.

The purpose of this Part is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The Designation Renewal System is established in this Part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start agency to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this Part, and is subject instead to the requirements of part 1302.

§ 1307.2 Definitions.

As used in this Part—

ACF means the Administration for Children and Families in the Department of Health and Human Services.

Act means the Head Start Act, 45 U.S.C. 9831 *et seq.*

Agency means a public or private non-profit or for-profit entity designated by ACF to operate a Head Start or Early Head Start program.

Aggregate child-level assessment data means the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classrooms, centers, home-based or other options, groups or settings, or other groups of children such as dual language learners, or to provide summary information by specific domains of development.

Child-level assessment data means the data collected by an agency on an individual child from one or more valid and reliable assessments of a child's status and progress, including but not limited to direct assessment, structured observations, checklists, staff or parent report measures, and portfolio records or work samples.

Early Head Start agency means a public or private non-profit or for-profit entity designated by ACF to operate an Early Head Start program to serve pregnant women and children from

birth to age three, pursuant to section 645A(e) of the Head Start Act.

Going concern means an organization that operates *without* the threat of liquidation for the foreseeable future, a period of at least 12 months.

Head Start agency means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start program to serve children age three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act.

School readiness goals mean the expectations of children's status and progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten.

Transition period means the three-year time period after December 9, 2011, on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions under section 1307.3 that require recompetition or if the grantee will receive its first five-year grant non-competitively.

§ 1307.3 Basis for determining whether a Head Start agency will be subject to an open competition.

A Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period covered by the responsible HHS official's review under § 1307.7 of this part:

(a) An agency has been determined by the responsible HHS official to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act in the relevant time period covered by the responsible HHS official's review under section 1307.7.

(b) An agency has been determined by the responsible HHS official based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period covered by the responsible HHS official's review under § 1307.7 not to have:

(1) After December 9, 2011, established program goals for improving the school readiness of children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Head Start Child Development and Early Learning Framework, State early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) After December 9, 2011, taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning,

physical well-being and motor development, and social and emotional development and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under §1307.7:

(1) After December 9, 2011, to have an average score across all classrooms observed below the following minimum thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain the minimum threshold is 4;

(ii) For the Classroom Organization domain, the minimum threshold is 3;

(iii) For the Instructional Support domain, the minimum threshold is 2;

(2) After December 9, 2011, to have an average score across all classrooms observed that is in the lowest 10 percent on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation among those currently being reviewed unless the average score across all classrooms observed for that CLASS: Pre-K domain is equal to or above the standard of excellence that demonstrates that the classroom interactions are above an exceptional level of quality. For all three domains, the ''standard of excellence'' is a 6.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a State or local licensing agency during the relevant time period covered by the responsible HHS official's review under §1307.7 of this part, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation shall not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under §1307.7 of this part and the suspension has not been overturned or withdrawn. If there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under 45 CFR part 1303, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status.

(f) An agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under §1307.7 of this part but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency has been determined within the twelve months preceding the responsible HHS official's review under §1307.7 of this part to be at risk of failing to continue functioning as a going concern. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a State agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General:

§1307.4 Grantee reporting requirements concerning certain conditions.

(a) Head Start agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011, if the agency has had a revocation of a license to operate a center by a State of local licensing entity during the period between June 12, 2009, and December 9, 2011.

(b) Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events following December 9, 2011:

(1) The agency has had a revocation of a license to operate a center by a State or local licensing entity.

(2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(3) The agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern.

§ 1307.5 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start or Early Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Act for Head Start. Any agency that has had its Head Start or Early Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start or Early Head Start agency that has had a denial of refunding, as defined in 45 CFR 1303.2, in the preceding five years is also excluded from competing.

§ 1307.6 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

(a) In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency.

(1) The plan will be established and implemented within six months after the responsible HHS official's determination.

(2) Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start or Early Head Start agency.

(3) If the Indian Head Start or Early Head Start agency is still not delivering a high quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will conduct an open competition to select a grantee to provide services for the community currently being served by the Indian Head Start or Early Head Start agency.

(b) A non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program.

(c) A non-Indian Head Start or Early Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated pursuant to this Part.

§ 1307.7 Designation request, review and notification process.

(a) Grantees must apply to be considered for Designation Renewal

(1) For the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five year period without competition shall request that status from ACF within six months of December 9, 2011.

(2) After the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for another five year period without competition shall request that status from ACF at least 12 months before the end of their five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under §1307.3 of this part were met by the Head Start and Early Head Start agency's program:

(1) During the first year of the transition period, ACF shall review the data on each Head Start and Early Head Start agency to determine if any of the conditions under §1307.3(a) or (d) through (g) of this part were met by the agency's program since June 12, 2009.

(2) During the remainder of the transition period, ACF shall review the data on each Head Start and Early Head Start agency still under grants with indefinite project periods and for whom ACF has relevant data on all of the conditions in §1307.3(a) through (g) of this part to determine if any of the conditions under §1307.3(a) or (d) through (g) were met by the agency's program since June 12, 2009, or if the conditions under §1307.3(b) or (c) existed in the agency's program since December 9, 2011.

(3) Following the transition period, ACF shall review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under §1307.3 of this partexisted in the agency's program during the period of that grant.

(c) ACF will give notice to grantees on Designation Renewal System status, except as provided in §1307.6 of this part:

(1) During the first year of the transition period, ACF shall give written notice to all grantees meeting any of the conditions under §1307.3(a) or (d) through (g) of this part since June 12, 2009, by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating that the Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period, identifying the conditions ACF found, and summarizing the basis for the finding. All grantees that do not meet any of the conditions under §1307.3(a) or (d) thorugh (g) will remain under indefinite project periods until the time period described under §1307.7(b)(2).

(2) During the remainder of the transition period, ACF shall give written notice to all grantees still under grants with indefinite project periods and on the conditions in §1307.3(a) through (g) by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1307.3(a) through (g) has been met during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1307.3 of this part have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1307.3 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(2)(i) of this section that it will be required to compete for funding for an additional five-year period.

(3) Following the transition period, ACF shall give written notice to all grantees at least 12 months before the expiration date of a Head Start or Early Head Start agency's then current

grant by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1307.3 of this part were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1307.3 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1307.3 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(3)(i) of this section that it will be required to compete for funding for an additional five-year period.

§1307.8 Use of CLASS: Pre-K Instrument in the Designation Renewal System.

Except when all children are served in a single classroom, ACF will conduct observations of multiple classes operated by the grantee based on a random sample of all classes and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation. After the observations are completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain.

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

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APPENDIX TO PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES TO CHILDREN WITH DISABILITIES

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 58 FR 5501, Jan. 21, 1993, unless otherwise noted.

Subpart A—General

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for 3- through 5-year-old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *day* means a calendar day.

(e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

(g) The term *eligibility criteria* means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.

(h) The term *grantee* means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.

(i) The term *individualized education program* (IEP) means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related services to be provided to an individual child.

(j) The term *least restrictive environment* means an environment in which services to children with disabilities are provided:

(1) to the maximum extent appropriate, with children who are not disabled and in which;

(2) special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(k) The term *Performance Standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(l) The term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.

(1) The term *assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) The term *assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

(m) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question or his or her designee.

(n) The term *special education* means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

Subpart B—Disabilities Service Plan

§ 1308.4 Purpose and scope of disabilities service plan.

(a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:

(1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents; and

(2) That resources are used efficiently.

(b) The plan must be updated annually.

(c) The plan must include provisions for children with disabilities to be included in the full range of activities and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.

(d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of large group activities and for any individual special help.

(e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.

(f) The disability service plan must contain:

(1) Procedures for timely screening;

(2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;

(3) Assurances of accessibility of facilities; and

(4) Plans to provide appropriate special furniture, equipment and materials if needed.

(g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/toddler programs (0–3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.

(h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

(1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;

(2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;

(3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;

(4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;

(5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;

(6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and

(7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.

(i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.

(j) The options may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Shared personnel to supervise special education services, when necessary to meet State requirements on qualifications;

(4) Administrative accommodations such as having two children share one enrollment slot when each child's IEP calls for part-time service because of their individual needs; and

(5) Any other strategies to be used to insure that special needs are met. These may include:

(i) Increased staff;

(ii) Use of volunteers; and

(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994–95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994–95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

(1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;

(2) Joint training of staff and parents;

(3) Procedures for referral for evaluations, IEP meetings and placement decisions;

(4) Transition;

(5) Resource sharing;

(6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually; and

(7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

(1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

(2) *Evaluation of children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making services accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without

much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;

(ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

Subpart C—Social Services Performance Standards

§ 1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgable about the provisions of 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

(1) The parents wish to enroll the child,

(2) The child meets the Head Start age and income eligibility criteria,

(3) Head Start is an appropriate placement according to the child's IEP, and

(4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities. In that case children who have a disability and nondisabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Need to access additional resources to serve a specific child;

(4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:

(1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;

(2) The services and resources provided by other agencies; and

(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

Subpart D—Health Services Performance Standards

§ 1308.6 Assessment of children.

(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:

(1) All children enrolled in Head Start are screened as the first step in the assessment process;

(2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;

(3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process,* consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.

(1) Grantees must provide for developmental, hearing and vision screenings of all Early Head Start and Head Start children within 45 days of the child's entry into the program. This does not preclude starting screening in the spring, before program services begin in the fall.

(2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.

(3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.

(d) *Developmental assessment, the second step,* is the collection of information on each child's functioning in these areas: gross and fine motor

skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.* (1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related services may be counted as children with disabilities.

[58 FR 5501, Jan. 21, 1993, as amended at 61 FR 57227, Nov. 5, 1996]

§ 1308.7 Eligibility criteria: Health impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders, rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders, including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attention due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

§ 1308.8 Eligibility criteria: Emotional/behavioral disorders.

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress or classroom behavior. A child is classified as having an emotional/behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

§ 1308.9 Eligibility criteria: Speech or language impairments.

(a) A speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's learning.

(b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.

(c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

(d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

(e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem; or

(3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

§ 1308.10 Eligibility criteria: Mental retardation.

(a) A child is classified as mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.

(c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and professional judgement are to be used instead.

(d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

§ 1308.11 Eligibility criteria: Hearing impairment including deafness.

(a) A child is classified as deaf if a hearing impairment exists which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred

for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by the IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

§ 1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect a child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings, to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

§ 1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or

(2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or

(3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

§ 1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication

and social interaction, that is generally evident before age three and that adversely affects educational performance.

§ 1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

§ 1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, ''Other impairments,'' are:

(1) To further coordination with LEAs and reduce problems of recordkeeping;

(2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are ''preschool disabled,'' ''in need of special education,'' ''educationally handicapped,'' and ''non-categorically handicapped.''

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

§ 1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before any medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents.

(3) Record changes in a child's behavior which have implications for drug

dosage or type and share this information with the staff, parents and the physician.

(4) Assure that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart E—Education Services Performance Standards

§ 1308.19 Developing individualized education programs (IEPs)

(a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.

(b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.

(c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.

(d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.

(e) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.

(2) A statement of annual goals, including short term objectives for meeting these goals.

(3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals.

(5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.

(6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

(1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) At least one of the professional members of the multidisciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon

as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

(1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;

(2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;

(3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;

(4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(k) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance.

Subpart F—Nutrition Performance Standards

§ 1308.20 Nutrition services.

(a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.

(b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.

(c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.

(d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

Subpart G—Parent Involvement Performance Standards

§ 1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

(1) Support parents of children with disabilities entering from infant/toddler programs.

(2) Provide information to parents on how to foster the development of their child with disabilities.

(3) Provide opportunities for parents to observe large group, small group and individual activities describe in their child's IEP.

(4) Provide follow-up assistance and activities to reinforce program activities at home.

(5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.

(6) Inform parents of their rights under IDEA.

(7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.

(8) Identify needs (caused by the disability) of siblings and other family members.

(9) Provide information in order to prevent disabilities among younger siblings.

(10) build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

APPENDIX TO PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES TO CHILDREN WITH DISABILITIES

This appendix sets forth guidance for the implementation of the requirements in part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. This guidance is not binding on Head Start grantees or delegate agencies. It provides assistance and possible strategies which a grantee may wish to consider. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various disabilities.

Section 1308.4 Purpose and scope of disabilities service plan

Guidance for Paragraph (a)

In order to develop an effective disabilities service plan the responsible staff members need to understand the context in which a grantee operates. The Head Start program has operated under a Congressional mandate, since 1972, to make available, at a minimum, ten percent of its enrollment opportunities to children with disabilities. Head Start has exceeded this mandate and serves children in integrated, developmentally appropriate programs. The passage of the Individuals With Disabilities Education Act, formerly the Education of the Handicapped Act, and its amendments, affects Head Start, causing a shift in the nature of Head Start's responsibilities for providing services for children with disabilities relative to the responsibilities of State Education Agencies (SEA) and Local Education Agencies (LEA).

Grantees need to be aware that under the IDEA the State Education Agency has the responsibility for assuring the availability of a free appropriate public education for all children with disabilities within the legally required age range in the State. This responsibility includes general supervision of educational programs in all agencies, including monitoring and evaluating the special education and related services to insure that they meet State standards, developing a comprehensive State plan for services for children with disabilities (including a description of interagency coordination among these agencies), and providing a Comprehensive System for Personnel Development related to training needs of all special education and related service personnel involved in the education of children with disabilities served by these agencies, including Head Start programs.

Each State has in effect under IDEA a policy assuring all children with disabilities beginning at least at age three, including those in public or private institutions or other care facilities, the right to a free appropriate education and to an evaluation meeting established procedures. Head Start is either:

- The agency through which the Local Education Agency can meet its obligation to make a free appropriate public education available through a contract, State or local collaborative agreement, or other arrangement; or
- The agency in which the family chooses to have the child served rather than using LEA services.

Regardless of how a child is placed in Head Start, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child found to be in need of special education and related services which are mandated in the State. The LEA is responsible for ensuring that these services are provided, but not for providing them all. IDEA stresses the role of multiple agencies and requires their maintenance of effort.

The Head Start responsibility is to make available directly or in cooperation with other agencies services in the least restrictive environment in accordance with an individualized education program (IEP) for at least ten percent of enrolled children who meet the disabilities eligibility criteria. In addition, Head Start continues to provide or arrange for the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children. Head Start has a mandate to recruit and enroll income-eligible children and children with disabilities who are most in need of services and to coordinate with the LEA and other groups to benefit children with disabilities and their families. Serving children with disabilities has strengthened Head Start's ability to individualize for all children. Head Start is fully committed to the maintenance of effort as required for all agencies by the IDEA and by the Head Start

Act (Section 640(a)(2)(A)). Head Start is committed to fiscal support to assure that the services which children with disabilities need to meet their special needs will be provided in full, either directly or by a combination of Head Start funds and other resources.

These Head Start regulations facilitate coordination with the IDEA by utilizing identical terms for eligibility criteria for the most part. However, Head Start has elected to use the term ''emotional/behavioral disorder'' in lieu of ''serious emotional disturbance,'' which is used in the IDEA, in response to comments and concerns of parents and professionals. Children who meet State-developed criteria under IDEA will be eligible for services from Head Start in that State.

In order to organize activities and resources to help children with disabilities overcome or lessen their disabilities and develop their potential, it is essential to involve the education, health, social services, parent involvement, mental health and nutrition components of Head Start. Parents, staff and policy group members should discuss the various strategies for ensuring that the disabilities service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Advance planning and scheduling of arrangements with other agencies is a key factor in assuring timely, efficient services. Local level interagency agreements can greatly facilitate the difficult tasks of locating related service providers, for example, and joint community screening programs can reduce delays and costs to each of the participating agencies.

Guidance for Paragraph (b)

The plan and the annual updates need to be specific, but not lengthy. As changes occur in the community, the plan needs to reflect the changes which affect services.

Guidance for Paragraph (c)

Grantees should ensure that the practices they use to provide special services do not result in undue attention to a child with a disability. For example, providing names and schedules of special services for children with disabilities in the classroom is useful for staff or volunteers coming into that classroom but posting them would publicize the disability of the individual children.

Guidance for Paragraph (d)

Staff should work for the children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Grantees should help children with disabilities develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. They should be included on field trips, as their experience may have been limited, for example, by an orthopedic impairment.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups, it should provide pictures and books which show children and adults with disabilities, including those in active roles.

Staff should plan to answer questions children and adults may have about disabilities. This promotes acceptance of a child with disabilities for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand disabilities and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from resource access projects contractors, which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including children with disabilities in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different skill levels. Staff need to help some children with disabilities move into developmentally appropriate play with other children.

Research has shown the effectiveness of work in small groups for appropriately selected children with disabilities. This plan allows for coordinating efforts to meet the needs of individual children as listed in their IEPs and can help focus resources efficiently.

If a deaf child who uses or needs sign language or another communication mode is enrolled, a parent, volunteer or aide who can use that mode of communication should be provided to help the child benefit from the program.

In order to build the language and speech capabilities of many children with disabilities who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them how to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experiences have been limited by other disabilities to express their own ideas and to communicate during play

and throughout the daily activities is motivating and can contribute greatly to their progress.

Guidance for Paragraph (e)

The Disabilities Service Coordinator should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency to serve children with disabilities including coordination with other program components and community agencies and work with parents.

Guidance for Paragraph (f)

For non-verbal children, communication boards, computers and other assistive technology devices may be helpful. Technical assistance providers have information on the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. 2201 *et seq.* States are funded through this legislation to plan Statewide assistive technology services, which should include services for young children. Parents should be helped to understand the necessity of including assistive technology services and devices in their child's IEP in order to obtain them.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children or promote learning. For example, rugs or other sound-absorbing surfaces make it easier for some children to hear stories or conversation. Different surfaces on floors and play areas affect some children's mobility.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance which implements the Rehabilitation Act of 1973 and the Americans with Disabilities Act require that all Federally assisted programs, including Head Start, be accessible to persons with disabilities including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible. Information on the accessibility standards is available from RAPs or the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035–6115.

Staff should ensure that children with physical disabilities have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy, Easter Seal Societies or SEAs can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert, such as a physical therapist, because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for Paragraph (h)

The plan should specify:

- Overall goals of the disability effort.
- Specific objectives and activities of the disability effort.
- How and when specific activities will be carried out and goals attained.
- Who will be responsible for the conduct of each element of the plan.
- How individual activities will be evaluated.

The plan should address:

- Enrollment information, including numbers of children and types of disabilities, known and estimated.
- Identification and recruitment of children with disabilities. Participation in Child Find and list of major specialized agencies approached.
- Screening.
- Developmental Assessment.
- Evaluation.
- The multidisciplinary team and its work.
- The process for developing IEPs.
- The provision of program services and related services.
- Program accessibility.
- Recordkeeping and reporting.
- Confidentiality of information.
- Any special safety needs.
- Medications.
- Transportation.
- The process for identifying and meeting training and technical assistance needs.
- Special parent involvement needs.
- Planned actions to increase the ability of staff to serve children with more severe disabilities and the number of children with more severe disabilities served.
- Transitioning of children in and out to the next program.

Particular attention should be given to addressing ways to:

- Involve parents throughout the disability effort, and
- Work with other agencies in serving children with disabilities. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described, as well as the process for developing local agreements with other agencies. The RAPs can provide samples and models for the process of developing agreements with LEAs.

Guidance for Paragraph (j)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program

such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. All services to be provided, including those provided by collaborating agencies, should be described in the IEP. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide equipment and transportation while a development center might provide a facility and physical therapy for a Head Start child. Some LEAs provide resource teachers while Head Start provides a developmentally appropriate program in an integrated setting.

Hiring additional staff may be necessary to meet the needs of children with severe disabilities. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with the increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the disabilities service coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical disabilities.

Volunteers trained by professionals to work specifically with children with disabilities can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific follow-up activities with individual children.

Guidance for Paragraph (k)

State standards for qualifications of staff to provide special education and related services affect Head Start's acceptance as a placement site for children who have been evaluated by an LEA. Head Start grantees, like LEAs, are affected by shortages of staff meeting State qualifications and are to work toward the goal of meeting the highest State standards for personnel by developing plans to train current staff and to hire new staff so that eventually the staff will meet the qualifications. Grantees should discuss their needs for pre-service and in-service training with SEAs during annual updates of interagency agreements for use in the planning of joint State level conferences and for use in preparation of Comprehensive State Personnel Development plans. They should also discuss these needs with LEAs which provide in-service training.

The program should provide training for the regular teachers on how to modify large group, small group or individual activities to meet the needs of children with disabilities. Specific training for staff should be provided when Head Start enrolls a child whose disability or condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, performing intermittent nonsterile catheterization, changing collection bags, suctioning, or operating leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with disabilities and to preventing disabilities. Ongoing training and technical assistance in support of the disabilities effort should be planned to complement other training available to meet staff needs. Each grantee has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

The best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

The core capability of the program is enhanced when speech, language and other therapy is provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs and time spent transporting children to clinics and other settings. When university graduate students are utilized to provide special services as part of their training, it is helpful to arrange for their supervisors to monitor their work. Grantees arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on-site. Grantees should negotiate when developing interagency agreements to have services provided on-site to the greatest extent possible.

The Head Start Act, Section 648 (42 U.S.C. 9843) (a)(2), calls for training and technical assistance to be offered to all Head Start programs with respect to services for children with disabilities without cost through resource access projects which serve each region of the country. The technical assistance contractors contact each grantee for a needs assessment and offer training. While their staffs are small and their budgets limited, they are experienced and committed to meeting as many needs as they can and welcome inquiries. A brochure with names and

addresses of the technical assistance providers is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

The SEA is responsible for developing a Comprehensive System of Personnel Development. It is important that Head Start training needs be conveyed to this group for planning purposes so that all available resources can be brought to bear for staff training in Head Start. Grantees should take advantage of free or low-cost training provided by SEAs, LEAs, community colleges and other agencies to augment staff training.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. The Lighthouse of New York City has developed a training program on early childhood and vision which was field-tested in Head Start and is suitable for community agencies. Head Start and the American Optometric Association have signed a memorandum of understanding under which member optometrists offer eye health education and screening. State-funded adult education and training programs or community colleges make available parenting, child development and other courses at low or no cost. Grantees should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The disabilities coordinator needs to work closely with the education and health coordinators to provide or arrange training for staff and parents early in each program year on the prevention of disabilities. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently.

The disabilities coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

Guidance for Paragraph (l)

The RAPS can provide information on agreements which have been developed between Head Start and SEAs and between Head Start and LEAs and other agencies. Such agreements offer possibilities to share training, equipment and other resources, smoothing the transition from Head Start to public or private school for children and their parents. Some of these agreements specify cost- and resource-sharing practices. Tribal Government Head Start programs should maximize use of Bureau of Indian Affairs, LEA and Head Start funds through cooperative agreements. Indian grantees should contact ACYF for referral to technical assistance in this regard. Grantees should bear in mind that migrant children are served in the majority of States and include consideration of their special needs, including the necessity for rapid provision of special education and related services, in agreements with LEAs and other agencies.

Guidance for Paragraph (m)

In developing the plan and the budget which is a part of the grant application process, it is important to budget adequately for the number of children with disabilities to be served and the types and severity of their disabilities. The budget should reflect resources available from other agencies as well as the special costs to be paid for from Head Start funds. The Head Start legislation requires Head Start to access resources to meet the needs of all the children enrolled, including those with disabilities.

An effective plan calls for the careful use of funds. The Disabilities Services Coordinator needs to keep current with the provisions of Part B of the IDEA and the services which may be available for three through five year-old children under this Act. Coordinators also need to utilize the expanded services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and Supplemental Security Income program.

To assist in the development of the plan, it may be helpful to establish an advisory committee for the disability effort or to expand the scope of the health advisory committee.

Guidance for Paragraph (o)

Examples of evaluation costs which can be covered include professional assessment by the multidisciplinary evaluation team, instruments, professional observation and professional consultation. If consultation fees for multidisciplinary evaluation team members to participate in IEP meetings are not available from another source, they are allowable expenditures and need to be provided to meet the performance standards.

Many children with disabilities enrolled in Head Start already receive services from other agencies, and grantees should encourage these agencies to continue to provide services. Grantees should use other community agencies and resources to supplement services for children with disabilities and their families.

By planning ahead, grantees can pool resources to schedule the periodic use of experts and consultants. Grantees can timeshare, reducing travel charges and assuring the availability of scarce expertise. Some LEAs and other agencies have enabling legislation and funds to contract for education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Individuals With Disabilities Education Act. The amount of the allocation to each SEA and to the public schools is affected by the number of three through five year old children with IEPs in place by December 1 of each year. By establishing good working relationships with State Public Health personnel and including them on advisory committees, health resources can be more easily utilized.

It may be helpful to explore the possibility of a cooperative agreement with the public school system to provide transportation. If the lack of transportation would prevent a child with disabilities from participating in Head Start, program funds are to be used to provide this related service before a delay occurs which would have a negative effect on the child's progress. The major emphasis is on providing the needed special help so that the child can develop to the maximum during the brief time in Head Start.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101) requires that new buses (ordered after August 26, 1990) by public bus systems must be accessible to individuals with disabilities. New over-the-road buses ordered by privately operated bus and van companies (on or after July 26, 1996 or July 26, 1997 for small companies) must be accessible. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. The Justice Department enforces these requirements.

Efforts should be made to obtain expensive items such as wheelchairs or audiometers through resources such as Title V (formerly Crippled Children's Services). Cooperative arrangements can be made with LEAs and other agencies to share equipment such as tympanometers. Special equipment such as hearing aids may be obtained through EPSDT or from SSI funds for those children who have been found eligible. Some States have established libraries of assistive technology devices and rosters of expert consultants.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

Guidance for Paragraph (a)

Head Start can play an important role in Child Find by helping to locate children in need and hardest to reach, such as immigrants and non-English speakers. In cooperation with other community groups and agencies serving children with disabilities, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with disabilities who meet eligibility requirements and whose parents desire the child's participation.

Integrating children with severe disabilities for whom Head Start is an appropriate placement is a goal of ACYF. Grantees should bear in mind that 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance or the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a disabling condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided. Many children who appear to have serious impairments are nevertheless able to make greater gains in an integrated setting than in a segregated classroom for children with disabilities.

The key factor in selecting an appropriate placement is the IEP. The need of the individual child and the ability of the child to benefit are determining factors. Likewise, the amount of time per day or week to be spent in the regular setting and/or in other settings is determined by the IEP. The IEP of a child with a severe emotional/behavioral disorder, for example, might realistically call for less than full day attendance or for dual placement. Another factor to consider is that according to the PIR, the majority of children with severe impairments are provided special services by both Head State staff and staff of other agencies, sharing the responsibility. Many grantees have successfully served children with moderate and severe disabilities.

The disabilities coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and the names of LEA Child Find contact persons to the director to facilitate joint identification of children with disabilities. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Title V, Maternal and Child Health Block Grants, Title XIX (EPSDT/Medicaid), Migrant Health Centers, Developmental Disabilities programs, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Grantees need to develop lists of appropriate referral sources. These include hospital child life programs, SSI, early intervention programs funded by Part H of the IDEA or other sources, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, Association for Retarded Citizens chapters, Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, the LEA Child Find, and the medical community.

Head Start programs are encouraged to increase the visibility of the Head Start mainstreaming effort within the community by:

• Including community child service providers on policy council health and disability advisory boards and in other relevant Head Start activities.

• Making presentations on Head Start mainstreaming experiences at local, State and Regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and the Association for the Care of Children's Health.

• Participating in interagency planning activities for preschool infant and toddler programs such as the State Interagency Coordinating Councils supported under the IDEA.

Guidance for Paragraph (b)

Grantees should maintain records of outreach, recruitment, and service activities for children with disabilities and their families.

Each grantee should develop a policy on what types of information are to be included in a comprehensive file for each disabled child. The policy should outline the locations where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program central office (where the disability services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality needs to be maintained in a manner which allows for access to information by appropriate staff while meeting applicable Head Start and State requirements.

Guidance for Paragraph (d)

Staff should assist families who need help in obtaining immunizations before the program year begins, bearing in mind that a goal of parent involvement and social service activities is to encourage independence and develop skills in meeting timelines when seeking services for children. Care should be taken that children are not denied enrollment, but that their families receive the necessary assistance to meet entrance requirements. ''Healthy Young Children: A Manual for Programs,'' (a cooperative effort of the Administration for Children, Youth and Families, the American Academy of Pediatrics; the Division of Maternal and Child Health, U.S. Department of Health and Human Services; Georgetown University Child Development Center; Massachusetts Department of Public Health, and the National Association for the Education of Young Children, 1988, copyright, NAEYC) contains best practice guidance.

Section 1308.6 Assessment of Children

Guidance for Paragraph (b)

Early screening is essential because of the time required for the steps necessary before special services can begin. It has been very difficult for some grantees to complete health screenings in a timely manner for several reasons including the lack of resources, especially in rural areas; the need to rely on donated services from agencies whose schedules have been especially overloaded during September and October after the start of the Head Start program year; lack of summer staff in most programs; and the difficulty in reaching some families. Lack of coordination among agencies with legislative responsibility for identifying children with disabilities has resulted in duplication and unacceptable delays in providing required services for many grantees. Other grantees, however, have demonstrated the ability to complete screenings early in the program year without difficulty. Many programs already complete screening by 45 days after the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Grantees are encouraged to schedule well in advance with clinics and with such providers as EPSDT and the Indian Health Service for timely screening and any subsequent evaluations that may be needed.

Recently, a number of legislative and legal requirements have increased the resources available for the screening and evaluation of children. Title XIX, EPDST/Medicaid, has new requirements for screening and evaluation, as well as treatment; the Social Security Administration has modified eligibility requirements for children with disabilities so that more services will be available; and all States have assured that services will be provided from at least age three under IDEA so that LEAs in more States will be engaged in identifying and evaluating children from birth to age six.

In response to these changes, the Department of Health and Human Services and the Department of Education, through the Federal Interagency Coordinating Council, have developed a cooperative agreement for coordinated screening. Head Start is one of the

participating agencies which will work together to plan and implement community screenings, assisting the LEAs which have the major responsibility for identifying every child with a disability under the IDEA. In addition, programs may elect to make some summer staff available for activities to close out program work in the spring and prepare for the fall.

These developments make timely screening feasible. They also make it possible to expedite immunizations. State-of-the-art coordinated screening programs make immunizations available.

This coordination can focus staff energy on assisting families to have their children immunized during the screening phase rather than making repeated follow-up efforts after the program for children has begun. Coordinated screening also provides an excellent parent education opportunity. Information on child development, realistic expectations for preschoolers and such services as WIC can be provided during the screening. Some communities have combined screening with well-received health fairs.

The staff should be involved in the planning of screening to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age-appropriate norms should be used. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist. The RAPs can provide information on the characteristics of screening instruments.

Current best practice indicates that individual pure tone audiometry be used as the first part of a screening program with children as young as three. The purpose is to identify children with hearing impairments that interfere with, or have the potential to interfere with communication. The recommended procedure is audiometric screening at 20 dB HL (re ANSI–1969) at the frequencies of 1000, 2000, and 4000 Hz, (and at 500 Hz unless acoustic immittance audiometry is included as the second part of the screening program and if the noise level in the room permits testing at that frequency.) Acoustic immittance audiometry (or impedance audiometry) is recommended as the second part of the program to identify children who have middle-ear disorders.

The audiometric screening program should be conducted or supervised by an audiologist. Nonprofessional support staff have successfully carried out audiometric screening with appropriate training and supervision.

When a child fails the initial screening, an audiometric rescreening should be administered the same day or no later than within 2 weeks. A child who fails the rescreening should be referred for an evaluation by an audiologist.

Current best practice calls for annual hearing tests. Frequent rescreening is needed for children with recurrent ear infections. Grantees who contract or arrange for hearing testing should check to assure that the testing covers the three specified frequencies and that other quality features are present. Speech, hearing and language problems are the most widespread disabilities in preschool programs and quality testing is vital for early detection and remediation.

Playing listening games prior to testing and getting use to earphones can help children learn to respond to a tone and improve the quality of the testing.

Some grantees have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity especially for teachers. State requirements for qualifications should be checked and nonprofessional screeners should be trained.

Some programs have involved trained students from schools of nursing, child development or special education graduate students, or medical students who must carry out screening work as part of their required experience.

Guidance for Paragraph (d)

Parents should be provided assistance if necessary, so that they can participate in the developmental assessment.

Grantees should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions which can affect their child's development and learning.

Development assessment is an ongoing process and information from observations in the Head Start center and at home should be recorded periodically and updated in each developmental area in order to document progress and plan activities.

Disabilities coordinators, as well as education staff, need to be thoroughly familiar with developmental assessment activities such as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments. Knowledge of normal child development and understanding of the culture of the child are also important.

Guidance for Paragraph (e)

While the LEA is responsible for assuring that each child who is referred is evaluated in accordance with the provisions of IDEA and usually provides the evaluation, grantees may sometimes provide for the evaluation. In that event, grantees need to assure that evaluation specialists in appropriate areas such as psychology, special education, speech pathology and physical therapy coordinate their activities so that the child's total functioning is considered and the

team's findings and recommendations are integrated.

Grantees should select members of the multidisciplinary evaluation team who are familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as they relate to the overall diagnostic process and the use of specific tests.

Grantees should be certain that team members understand that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom also need special education and related services. The intent of the evaluation procedures is to provide information to identify children who have disabling conditions so they can receive appropriate assistance. It is also the intent to avoid mislabeling children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a regular comprehensive program meeting the Head Start Performance Standards.

When a grantee provides for the evaluation of a child, it is important that the Head Start eligibility criteria be explained to the evaluation team members and that they be informed as to how the results will be used.

Grantees should require specific findings in writing from the evaluation team, and recommendations for intervention when the team believes the child has a disability. The findings will be used in developing the child's IEP to ensure that parents, teachers and others can best work with the child. Some grantees have obtained useful functional information by asking team members to complete a brief form describing the child's strengths and weaknesses and the effects of the disability along with suggestions for special equipment, treatment or services. The evaluators should be asked in advance to provide their findings promptly in easily understood terms. They should provide separate findings and, when they agree, consensus professional opinions. When planning in advance for evaluation services from other agencies, grantees should try to obtain agreements on prompt timing for delivery of reports which are necessary to plan services.

To assist the evaluation team, Head Start should provide the child's screening results, pertinent observations, and the results of any developmental assessment information which may be available.

It is important that programs ensure that no individual child or family is labeled, mislabeled, or stigmatized with reference to a disabling condition. Head Start must exercise care to ensure that no child is misidentified because of economic circumstances, ethnic or cultural factors or developmental lags not caused by a disability, bilingual or dialectical differences, or because of being non-English speaking.

If Head Start is arranging for the evaluation, it is important to understand that a child whose problem has been corrected (e.g., a child wearing glasses whose vision is corrected and who does not need special education and related services) does not qualify as a child with a disability. A short-term medical problem such as post-operative recovery or a problem requiring only medical care and health monitoring when the evaluation specialists have not stated that special education and related services are needed does not qualify as a disability.

The evaluation team should include consideration of the way the disability affects the child's ability to function as well as the cause of the condition.

Some children may have a recent evaluation from a clinic, hospital or other agency (other than the LEAs) prior to enrolling in Head Start. If that evaluation did not include needed functional information or a professional opinion as to whether the child meets one of the Head Start eligibility criteria, the grantee should contact the agency to try to obtain that information.

Some children, prior to enrolling in Head Start, already have been diagnosed as having severe disabilities and a serious need for services. Some of these children already may be receiving some special assistance from other agencies for their disabilities but lack developmental services in a setting with other children. Head Start programs may best meet their needs by serving them jointly, i.e., providing developmental services while disability services are provided from another source. It is important in such situations that regular communication take place between the two sites.

Beginning in 1990, State EPSDT/Medicaid programs must, by law, evaluate and provide services for young children whose families meet eligibility criteria at 133 percent of the poverty levels. This is a resource for Head Start and it is important to become aware of EPSDT provisions.

Section 1308.7 Eligibility Criteria: Health Impairment Guidance

Guidance for Paragraph (c)

Many health impairments manifest themselves in other disabling conditions. Because of this, particular care should be taken when classifying a health impaired child.

Guidance for Paragraph (b)

Because AIDS is a health impairment, grantees will continue to enroll children with AIDS on an individual basis. Staff need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency Virus (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS)

dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. It provides guidance in the event that a child with disabilities presents a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned. Staff should be aware that there is a high incidence of visual impairment among children with HIV and AIDS.

Guidance for Paragraph (c)

Teachers or others in the program setting are in the best position to note the following kinds of indications that a child may need to be evaluated to determine whether an attention deficit disorder exists:

(1) Inability of a child who is trying to participate in classroom activities to be able to orient attention, for example to choose an activity for free time or to attend to simple instructions;

(2) Inability to maintain attention, as in trying to complete a selected activity, to carry out simple requests or attend to telling of an interesting story; or

(3) Inability to focus attention on recent activities, for example on telling the teacher about a selected activity, inability to tell about simple requests after carrying them out, or inability to tell about a story after hearing it.

These indicators should only be used after the children have had sufficient time to become familiar with preschool procedures and after most of the children are able easily to carry out typical preschool activities.

Culturally competent staff recognize and appreciate cultural differences, and this awareness needs to include understanding that some cultural groups may promote behavior that may be misinterpreted as inattention. Care must be taken that any deviations in attention behavior which are within the cultural norms of the child's group are not used as indicators of possible attention deficit disorder.

A period of careful observation over three months can assure that adequate documentation is available for the difficult task of evaluation. It also provides opportunity to provide extra assistance to the child, perhaps through an aide or special education student under the teacher's direction, which might improve the child's functioning and eliminate the behavior taken as evidence of possible attention deficit disorder.

Attention deficit disorders are not the result of learning disabilities, emotional/behavioral disabilities, autism or mental retardation. A comprehensive psychological evaluation may be carried out in some cases to rule out learning disability or mental retardation. It is possible, however, in some instances for this disability to coexist with another disability. Children who meet the criteria for multiple disabilities (e.g., attention deficient disorder and learning disability, or emotional/behavioral disorder, or mental retardation) would be eligible for services as children with multiple disabilities or under their primary disability.

Teacher and parent reports have been found to provide the most useful information for assessment of children suspected of having attention deficit disorder. They are also useful in planning and providing special education intervention. The most successful approach may be a positive behavior modification program in the classroom, combined with a carryover program in the home. Prompt and clear response should be provided consistently. Positive reinforcement for appropriate behavior, based on rewards such as stickers or small items desired by the child has been found effective for children with this disorder, along with occasional withholding of rewards or postponing of desired activities in the face of inappropriate behavior. Effective programs suggest that positive interactions with the child after appropriate behavior are needed at least three times as often as any negative response interactions after inappropriate behavior. Consultants familiar with behavior modification should be used to assist teachers in planning and carrying out intervention which can maintain this positive to negative ratio while shaping behaviors. These behavior interventions can be provided in mainstream placements with sufficient personnel.

Suggested Primary Members of A Head Start Evaluation Team for Health Impaired Children:

Physician.

Pediatrician.

Psychologist.

Other specialists related to specific disabilities.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Family counseling.

Genetic counseling.

Nutrition counseling.

Recreational therapy.

Supervision of physical activities.

Transportation.

Assistive technology devices or services

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Guidance for Paragraph (a)

Staff should insure that behavior which may be typical of some cultures or ethnic groups, such as not making eye contact with teachers or other adults or not volunteering comments or initiating conversations are not misinterpreted.

The disability, social service and parent involvement coordinators should consider providing extra attention to children at-risk for emotional/behavioral disorders and their parents to help prevent a disability. Members of the Council of One Hundred, Kiwanis, Urban League, Jaycees, Rotary, Foster Grandparents, etc. may be able to provide mentoring and individual attention.

Suggested Primary Members of a Head Start Evaluation Team for Emotional/behavioral Disorders:

Psychologist, psychiatrist or other clinically trained and State qualified mental health professionals.

Pediatrician.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Behavior management.

Environmental adjustments.

Family counseling.

Psychotherapy.

Transportation.

Assistive technology.

Section 1308.9 Eligibility Criteria: Speech or Language Impairment

Guidance for Paragraph (a)

Staff familiar with the child should consider whether shyness, lack of familiarity with vocabulary which might be used by testers, unfamiliar settings, or linguistic or cultural factors are negatively influencing screening and assessment results. Whenever possible, consultants trained in assessing the speech and language skills of young children should be selected. The child's ability to communicate at home, on the playground and in the neighborhood should be determined for an accurate assessment. Review of the developmentally appropriate age ranges for the production of difficult speech sounds can also help reduce over-referral for evaluation.

Suggested Primary Members of a Head Start Evaluation Team for Speech or Language Impairment:

Speech Pathologist.

Language Pathologist.

Audiologist.

Otolaryngologist.

Psychologist.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.

Family counseling.

Language therapy.

Speech therapy.

Transportation.

Assistive technology devices or services.

Section 1308.10 Eligibility Criteria: Mental Retardation

Guidance for Paragraph (a)

Evaluation instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments that the child may have (e.g., a child who is visually impaired should not be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

Suggested primary members of a Head Start evaluation team for mental retardation:

Psychologist.

Pediatrician.

Possible related services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)

Environmental adjustments.

Family counseling.

Genetic counseling.

Language therapy.

Recreational therapy.

Speech therapy.

Transportation.

Nutrition counseling.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Guidance for Paragraph (a)

An audiologist should evaluate a child who has failed rescreening or who does not respond to more than one effort to test the child's hearing. If the evaluation team determines that the child has a disability, the team should make recommendations to meet the child's needs for education and medical care or habilitation, including auditory training to learn to use hearing more effectively.

Suggested Primary Members of a Head Start Evaluation Team for Hearing Impairment:

Audiologist.

Otolaryngologist.

Possible Related Services:

(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication, speechreading or manual communication.
Transportation.
Use of amplification.
Assistive technology devices or services.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Guidance for Paragraph (a)

Suggested Primary Members of a Head Start Evaluation Team for Orthopedic Impairment:
Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.
Rehabilitation professional.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Assistive technology.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Eligibility Criteria: Visual Impairment Including Blindness

Guidance for Paragraph (a)

Primary Members of an Evaluation Team for Visual Impairment including Blindness:
Ophthalmologist.
Optometrist.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Functional vision assessment and therapy.

Section 1308.14 Learning Disabilities

Guidance for Paragraph (a)

When a four or five-year-old child shows signs of possible learning disabilities, thorough documentation should be gathered. For example, specific anecdotal information and samples of the child's drawings, if appropriate, should be included in the material given to the evaluation team.
A Master's degree level professional with a background in learning disabilities should be a member of the evaluation team.
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Vision evaluation.
Neurology.
Psychology.
Motor development.
Hearing evaluation.
Child psychiatry.
Pediatric evaluation.

Section 1308.15 Autism

A child who manifests characteristics of the condition after age three can still be diagnosed as having autism. Autism does not include children with characteristics of serious emotional disturbance.
Suggested possible members of a Head Start evaluation team:
Psychologist.
Pediatrician.
Audiologist.
Psychiatrist.
Language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Family support services.
Language therapy.
Transportation.

Section 1308.16 Traumatic Brain Injury

Traumatic brain injury does not include congenital brain injury.
Suggested possible members of an evaluation team included:
Psychologist.
Physical therapist.
Speech or language pathologist.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Rehabilitation professional.

Occupational therapy.
Speech or language therapy.
Assistive technology.

Section 1308.17 Other Impairments

This category was included to ensure that any Head Start child who meets the State eligibility criteria as developmentally delayed or State-specific criteria for services to preschool children with disabilities is eligible for needed special services either within Head Start or the State program.

Suggested primary members of an evaluation team for other impairments meeting State eligibility criteria for services to preschool children with disabilities.
Pediatrician.
Psychologist.
Other specialists with expertise in the appropriate area(s).
Possible Related Services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Occupational therapy.
Speech or language therapy.
Family Counseling.
Transportation.

Deaf-blindness

Information on assistance or joint services for deaf-blind children can be obtained through SEAs.

Multiple Disabilities

A child who is deaf and has speech and language impairments would not be considered to have multiple disabilities, as it could be expected that these impairments were caused by the hearing loss.

Suggested primary members of a Head Start evaluation team:
Audiologists.
Special educators.
Speech, language or physical therapists.
Psychologists or psychiatrists.
Rehabilitation professional.
Possible related services:
(Related services are determined by individual need. These ''possible related services'' are merely examples and are not intended to be limiting.)
Speech, language, occupational or physical therapists as needed.
Assistive technology devices or services.
Mental health services.
Transportation.

Section 1308.18 Disabilities/Health Services Coordination

Guidance for Paragraph (a)

It is important for staff to maintain close communication concerning children with health impairments. Health and disability services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to ensure that they receive ongoing medical treatment to prevent speech and language delay. They should ensure that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education services districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17 percent of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for Paragraph (b)

The disabilities services coordinator needs to assure that best use is made of mental health consultants when a child appears to have a problem which may be symptomatic of a disability in the social/emotional area. Teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, the events which appear to precipitate the tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be used primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of children with disabilities which provide needed support and a forum for talking over mutual concerns. Parents needing community mental health services may need direct assistance in accessing services, especially at first.

The disability services coordinator needs to work closely with staff across components to help parents of children who do not have disabilities become more understanding and knowledgeable about disabilities and ways to lessen their effects. This can help reduce the isolation which some families with children with disabilities experience.

Guidance for Paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Awareness of possible side effects is of particular importance when treatment for a disability requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.19 Developing Individual Education Programs (IEPs)

Guidance for Paragraph (a)

The IEP determines the type of placement and the specific programming which are appropriate for a child. The least restrictive environment must be provided and staff need to understand that this means the most appropriate placement in a regular program to the maximum extent possible based on the IEP. Because it is individually determined, the least restrictive environment varies for different children. Likewise, the least restrictive environment for a given child can vary over time as the disability is remediated or worsens. A mainstreamed placement, in a regular program with services delivered by regular or special staff, is one type of integrated placement on the continuum of possible options. It represents the least restrictive environment for many children.

Following screening, evaluation and the determination that a child meets the eligibility criteria and has a disability, a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies which may cooperate in providing services and especially with LEAs or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the LEAs and use that format to foster coordination. However, the format of the IEP to be developed for children in Head Start can vary according to local option. It should be developed to serve as a working document for teachers and others providing services for a child.

It is recommended that the staff review the IEP of each child with a disability more frequently than the minimum once a year to keep the objectives and activities current.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his or her special needs and this should be the first option considered. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the findings and recommendations of the multidisciplinary evaluation team, observation and developmental assessment information from the Head Start staff and parents, parental information and desires, and the IEP to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year. For example, a child with autism whose IEP called for part-time services in Head Start in the fall might improve so that by spring the hours could be extended.

If Head Start is not an appropriate placement to meet the child's needs according to the IEP, referral should be made to another agency.

Helpful specific information based on experience in Head Start is provided in manuals and resource materials on serving children with disabilities developed by ACYF and by technical assistance providers. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers; and
- Developing appropriate curriculum activities and home follow-up activities.

Guidance for Paragraph (j)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in ongoing planning. Care should be taken to put parents at ease and to eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve parents actively, not just to obtain their signature on the IEP.

It is important to involve the parents of children with disabilities in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through on the child's treatment plan, to the extent possible. It is especially helpful for Head Start to assist parents in developing confidence, strategies and techniques to become effective advocates for their children and to negotiate complicated systems. Under IDEA, a federally-funded Parent Training and Information Program exists whereby parent training centers in each State provide information, support and assistance to parents enabling them to advocate for their child. Information regarding these centers should be given to parents of a child determined to have a disability. Because some parents will need to advocate for their children over a number of years, they need to gain the confidence and skills to access resources and negotiate systems with increasing independence.

Some parents of children with disabilities are also disabled. Staff may need to adjust procedures for assisting parents who have disabilities to participate in their children's programs. Materials to assist in this effort are available from technical assistance providers.

Section 1308.20 Nutrition Services

Guidance for Paragraph (a)

Vocabulary and concept building, counting, learning place settings, social skills

such as conversation and acceptable manners can be naturally developed at meal or snack time, thus enhancing children's skills. Children with disabilities often need planned attention to these areas.

The staff person who is responsible for nutrition and the disabilities services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the disabilities services coordinator should alert staff to watch for practices leading to baby bottle caries. This is severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water or letting the child carry around a bottle for long periods of time. The serious dental and speech problems this can cause are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician or a medical consultant.

Section 1308.21 Parent Participation and Transition of Children From Head Start to Public School

Guidance for Paragraph (a)

Grantees should help parents understand the value of special early assistance for a child with a disability and reassure those parents who may fear that if their child receives special education services the child may always need them. This is not the experience in Head Start and most other preschool programs where the majority of children no longer receive special education after the preschool years. The disabilities coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of disabilities and develop to their full potential.

The disabilities coordinator should help program staff deal realistically with parents of children who have unfamiliar disabilities by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or home visits do not overlook possible disabilities among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for Paragraphs (b) and (c)

As most Head Start children will move into the public school system, disabilities coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Disabilities coordinators need to ensure that the Head Start program:

- Provides information on services available for LEAs and other sources of services parents will have to access on their own, such as dental treatment;
- Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;
- Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;
- Familiarizes parents and staff of the receiving program's characteristics and expections;
- Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;
- Provides information on services available under the Individuals With Disabilities Education Act, the federally-funded parent training centers and provisions for parent involvement and due process; and
- Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop activities for smooth transition into Head Start from Part H infant/toddler programs funded under IDEA and from Head Start to kindergarten or other placement. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Part H programs, Head Start and LEAs. ACYF has developed materials useful for transition. American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1309—HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

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AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 64 FR 5945, Feb. 8, 1999, unless otherwise noted.

Subpart A—General

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) and 645A(b)(9) of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as they apply to grantees operating Head Start programs (including Early Head Start grantees) under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in such facilities purchased, constructed or renovated with Head Start grant funds.

[68 FR 23219, May 1, 2003]

§ 1309.2 Approval of the use of Head Start funds to continue purchase of facilities.

Head Start grantees (including Early Head Start grantees) which purchased facilities after December 31, 1986, and which are continuing to pay costs of purchasing those facilities, may apply to receive Head Start funds to meet those costs by submitting applications which conform to the requirements of this part and the Act. A grantee may only use grant funds to pay facility purchase costs incurred after the responsible HHS official approves its application.

[68 FR 23219, May 1, 2003]

§ 1309.3 Definitions.

As used in this part,

ACF means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

Acquire means to purchase or construct in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, and for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

Act means the Head Start Act, 42 U.S.C. section 9801, *et seq.*

ACYF means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

Construction means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee to carry out a Head Start program.

Grant funds means Federal financial assistance received by a grantee from ACF to administer a Head Start or Early Head Start program pursuant to the Head Start Act.

Grantee means any agency designated to operate a Head Start program (including an agency designated to operate an Early Head Start program) pursuant to section 641 or 645A of the Head Start Act.

Head Start center or a direct support facility for a Head Start program means a facility used primarily to provide Head Start services to children and their families, or for administrative or other activities necessary to the conduct of the Head Start program.

Incidental alterations and renovations means improvements to facility which do not meet the definition of major renovation.

Major renovation means a structural change to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility, such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility. Major renovation also includes a renovation of any kind which has a cost exceeding the lesser of $200,000, adjusted annually to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after June 2, 2003, or 25 percent of the total annual direct costs approved for the grantee by ACF for the budget period in which the application is made.

Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

Purchase means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities begun after December 31, 1986 as permitted by the Head Start Act and by §1309.2.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Responsible HHS official means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

Suitable facility means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23219, May 1, 2003]

§ 1309.4 Eligibility—Construction.

Before submitting an application under §1309.10 for construction of a facility, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease in the service area is suitable for use by the Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23219, May 1, 2003]

§ 1309.5 Eligibility—Major Renovations.

Before submitting an application under §1309.10, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe, or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit or prevent the operation of the

program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by written statement from a licensed real estate professional in the grantee's service area.

[68 FR 23220, May 1, 2003]

Subpart B—Application Procedures

§ 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under § 1309.4 to apply for funds to construct a facility, or § 1309.5 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, early education programs, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be acquired, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located or will be located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted, must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation or construction project, the applicant must submit a written estimate of all costs associated with the project. An architect or engineer must prepare the written estimate.

(c) The cost comparison described in § 1309.11.

(d) The intended use of the facility proposed for acquisition or major renovation, including information showing the percentage of floor space that will be used as a Head Start center or a direct support facility for a Head Start program. As provided under section 644(f)(2)(D) of the Act, in the case of a request regarding funding for the continuing purchase of a facility, the application must include information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee will also assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the use of Head Start funds to continue purchase of a facility is unable to provide such statements based on circumstances which existed at the time the purchase began, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovations, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or for which Head Start funds will be used to continue to purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that, upon completion of major renovation to a facility or construction of a facility, that an inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurance that the applicant will obtain, or has obtained, a fee simple or such other estate or interest in the site of the facility to assure undisturbed use and possession for the purpose of operating a Head Start program. A grantee seeking funding for acquisition or *major renovation* of a facility that is sited on land not owned by the grantee must establish in its application that there is no other feasible alternative to acquisition or *leasing* of the facility for providing a suitable facility appropriate to the needs of the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is or will be situated, the application must include a copy of the existing or proposed land lease or other document which protects the Federal interest in the facility and ensures undisturbed use and possession of the facility by the grantee, or other organization designated by ACF, for the purpose of operating a Head Start program or other program designated by ACF. A grantee applying for funding to make major renovations to a facility it does not own must include with its application written permission from the owner of the building projected to undergo major renovation and a copy of the lease or proposed lease for the facility. A grantee receiving funds for acquisition or the major renovation of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of those permanent grant-supported improvements.

(m) An assessment of the impact of the proposed project on the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500 through 1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of the use of Head Start funds to continue purchase of a facility, a statement of the extent to which it has attempted to comply and will be able to comply with the provision of §1309.22.

(q) Such additional information as the responsible HHS official may require.

[68 FR 23220, May 1, 2003]

§1309.11 Cost comparison for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the costs of the proposed activity as provided under paragraph (c) of this section and provide any additional information requested by the responsible HHS official.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, or which the grantee will continue to purchase with Head Start funds or to receive major renovation, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare costs of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and suitable for use as a Head Start facility or which can be made suitable through incidental alteration or renovations, the cost of which shall be included in the cost comparison. In the case of an application for approval of the use of Head Start funds to continue purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, or the grantee had no previous facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service are at the time of its purchase of the current facility. Grantees which have established under §1309.10(f) that there is a lack of alternative facilities that will prevent or would have prevented operation of the program are not required to provide a cost comparison under this paragraph.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of purchasing a suitable alternate facility or owning, purchasing or leasing an alternative facility which can be made suitable for use through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the costs of constructing a facility of comparable size. In place of the cost comparison required in the preceding sentence, a grantee proposing to make major renovations to a leased facility must show that the monthly or annual occupancy

costs for the term of the lease, including the cost of the major renovations, is less than, or comparable to, the costs of purchasing or leasing any other facility in the grantee's service area which can be made suitable through major renovations, if such a facility is available.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including but not limited to, costs of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison for purchase, construction or major renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of the use of Head Start funds to continue purchase of the facility the period of comparison begins on the date the purchase began.

(f) If the facility is to be used for other purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

[68 FR 23221, May 1, 2003]

§ 1309.12 Timely decisions.

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

Subpart C—Protection of Federal Interest

§ 1309.20 Title.

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the Federal interest in such property to that of a lender, which financed the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d)(1) A grantee receiving funds to acquire or make major renovations to a facility that is or will be sited on land not owned by the grantee must have a lease or other arrangement which protects the Federal interest in the facility and ensures the grantee's undisturbed use and possession of the facility. The lease or document evidencing another arrangement shall include provisions to protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease or other arrangement and such other terms required by the responsible HHS official. The designation of an alternate tenant or occupant of the facility by ACF shall be subject to approval by the Lessor, which will not be withheld except for good reason, not including the willingness of another party to pay a higher rent. A grantee receiving funds for the major renovation or acquisition of a facility, on land belonging to another party, must have a land lease or other similar interest in the underlying land which is long enough to allow the Head Start program to receive the full value of

those permanent grant-supported improvements.

(2) Except as required under §1309.31 for certain modular units, the grantee must record the Notice of Federal Interest in the appropriate official records for the jurisdiction where a facility is or will be located immediately upon: purchasing a facility or land on which a facility is to be constructed; receiving permission to use funds to continue purchase of a facility; commencing major renovation of a facility or construction of a facility. In the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments. In the case of a facility now sited or to be constructed on land not owned by the grantee, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest. The lease or other document must ensure the right of the grantee to have undisturbed use and possession of the facility. In the event that filing of a lease is prohibited by State law, the grantee shall file an affidavit signed by the representatives of the grantee and the Lessor stating that the lease includes terms which protect the right of the grantee, or some other organization designated by ACF in the place of the grantee, to occupy the facility for the term of the lease.

(3) The Notice of Federal Interest for property sited on land not owned by the grantee shall include the following information:

(i) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;

(ii) That the grant incorporated conditions which included restrictions on the use of the property and provide for a Federal interest in the property;

(iii) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(iv) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(v) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(vi) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(4) A lease, serving as a Notice of Federal Interest, an affidavit filed in the land records as a substitute for the lease, or other document protecting the Federal interest in a facility acquired with grant funds and sited on land not owned by the grantee, shall include the following information:

(i) The address and legal description of the property;

(ii) That the grant incorporated conditions which include restrictions on the use of the property and provide for a Federal interest in the property for the term of the lease or other arrangement; and

(iii) That the property may not be used for any purpose during the lease or other arrangement that is inconsistent with that authorized by the Head Start Act and applicable regulations.

(e) Grantees must meet all of the requirements in 45 CFR part 75 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS officials does not waive application of paragraph (d) of this section and §1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

(1)(i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: ''The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official'';

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23221, May 1, 2003; 81 FR 3022, Jan. 20, 2016]

§ 1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money of performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgage or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The required provisions must be included in the mortgages of facilities funded as continuing purchases pursuant to §1309.2 unless a convincing justification for not doing so is shown by the Head Start grantee.

(b) The grantee must immediately provide the responsible HHS official with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel mortgage.

(c) In the event that a default is not cured and foreclosure takes place, the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share as defined in 45 CFR 75.2. If ACF and the mortgagee or creditor have agreed that ACF's Federal interest will be subordinated to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with §1309.21 and any other applicable Federal law.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23222, May 1, 2003; 81 FR 3022, Jan. 20, 2016]

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the use of Head Start funds to continue purchase the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it owns, and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section.

For facilities, which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance policies within five days of acquiring the facility or receiving approval for the previous purchase of a facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23222, May 1, 2003]

Subpart D—Modular Units

§ 1309.30 General.

In addition to the special requirements of §§ 1309.31 through 1309.34, the proposed purchase or request for approval of continuing purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) The requirements of § 1309.33 apply rather than the requirement of § 1309.10(i); and

(b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

§ 1309.31 Site description.

(a) An application for the purchase or approval of a continuing purchase of a modular unit pursuant to § 1309.2 must state specifically where the modular unit is or will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase the land on which to install the modular unit or if the modular unit the grantee is continuing to purchase with Head Start funds is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: ''On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions

are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 75; and Administration for Children and Families' grants policy.''

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003; 81 FR 3022, Jan. 20, 2016]

§ 1309.32 Statement of procurement procedure for modular units.

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR part 75, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval for the use of Head Start funds for continued purchase of a modular unit must also include a copy of the specifications for the unit.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003; 81 FR 3022, Jan. 20, 2016]

§ 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a continuing purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a continuing purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

[68 FR 23223, May 1, 2003]

§ 1309.34 Costs of installation of modular unit.

Consistent with the cost principles referred to in 45 CFR part 75, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

[64 FR 5945, Feb. 8, 1999, as amended at 81 FR 3022, Jan. 20, 2016]

Subpart E—Other Administrative Provisions

§ 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

[68 FR 23223, May 1, 2003]

§ 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the case of leased facilities) of the facility plus three years.

[68 FR 23223, May 1, 2003]

§ 1309.42 Audit of mortgage.

Any audit of a grantee, which has acquired or made major renovations to a facility with grant funds, shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit and appraisal are payable with grant funds.

[68 FR 23223, May 1, 2003]

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 75, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under §§ 1309.4 and 1309.5, or otherwise prior to the submission of an application under § 1309.10 or acquisition of the facility) are payable with grant

funds, and require prior, written approval of the responsible HHS official.

[68 FR 23223, May 1, 2003, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to acquire or make major renovations to a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to §1309.11, or the statement under 1309.10(f) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property to be purchased or renovated is situated.

(c) Section 1309.43 of this part applies to payment of the cost of the analysis.

[64 FR 5945, Feb. 8, 1999, as amended at 68 FR 23223, May 1, 2003]

Subpart F—Construction and Major Renovation

SOURCE: 68 FR 23223, May 1, 2003, unless otherwise noted.

§ 1309.51 Submission of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and written specifications for the project, a written certification by a licensed engineer or architect as to technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) of this section and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and specifications is appropriate to the needs of the grantee.

§ 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedure in 45 CFR part 75, and must be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and require that the contractor shall facilitate such access and inspection.

[68 FR 23223, May 1, 2003, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

§ 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and the Regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

PART 1310—HEAD START TRANSPORTATION

Subpart A—General

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Subpart C—Special Requirements

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1310.23 Coordinated transportation.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 66 FR 5311, Jan. 18, 2001, unless otherwise noted.

Subpart A—General

§ 1310.1 Purpose.

Under the authority of sections 640(i) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*), this part prescribes regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programs. Under the authority of sections 644(a) and (c) and 645A(b)(9) of the Head Start Act, this part also requires Head Start, Early Head Start, and delegate agencies to provide training in pedestrian safety and to make reasonable efforts to coordinate transportation resources to control costs and to improve the quality and the availability of transportation services.

§ 1310.2 Applicability.

(a) This rule applies to all Head Start and Early Head Start agencies, and their delegate agencies (hereafter, agency or agencies), including those that provide transportation services, with the exceptions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider. Transportation services to children served under the home-based Option for Head Start and Early Head Start services are excluded from the requirements of 45 CFR 1310.12, 1310.15(c), and 1310.16. Except when there is an applicable State or local requirement that sets a higher standard on a matter covered by this part, agencies must comply with requirements of this part.

(b)(1) Sections 1310.12(a) and 1310.22(a) of this part are effective December 20, 2006.

(2) This paragraph and paragraph (c) of this section, the definition of child restraint systems in Sec. 1310.3 of this part, and Sec. 1310.15(a) are effective November 1, 2006. Sections 1310.11 and 1310.15(c) of this part are effective June 21, 2004. Section 1310.12(b) of this part is effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective November 1, 2006, an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. ''Good cause'' for a waiver will exist when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the agency,

or when compliance with requirements related to child restraint systems (Secs. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved. In addition, the responsible HHS official shall have the authority to grant waivers of the requirements related to child restraint systems (Sec. 1310.11, 1310.15(a)) or bus monitors (Sec. 1310.15(c)) that are retroactive to October 1, 2006 during the period from November 1, 2006 to October 30, 2007. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

[66 FR 5311, Jan. 18, 2001, as amended at 69 FR 2517, Jan. 16, 2004; 71 FR 58535, Oct. 4, 2006]

§ 1310.3 Definitions.

Agency as used in this regulation means a Head Start or Early Head Start or delegate agency unless otherwise designated.

Agency Providing Transportation Services means an agency providing transportation services, either directly or through another arrangement with a private or public transportation provider, to children enrolled in its Head Start or Early Head Start program.

Allowable Alternate Vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Bus monitor means a person with specific responsibilities for assisting the driver in ensuring the safety of the children while they ride, board, or exit the vehicle and for assisting the driver during emergencies.

Child Restraint System means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Delegate Agency means a local public or private not-profit or for-profit agency to which a Head Start or Early Head Start agency has delegated all or part of its responsibility for operation of a Head Start program.

Early Head Start Agency means a public or private non-profit or for-profit agency or delegate agency designated to operate an Early Head Start program pursuant to Section 645A of the Head Start Act.

Early Head Start Program means a program of services provided by an Early Head Start Agency funded under the Head Start Act.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Head Start Agency, means a local public or private non-profit or for-profit agency designated to operate a Head Start program pursuant to Section 641 of the Head Start Act.

Head Start Program means a program of services provided by a Head Start agency or delegate agency and funded under the Head Start Act.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the vehicle is engaged in reverse.

School Bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Seat Belt Cutter means a special device that may be used in an emergency to rapidly cut through the seat belts used on vehicles in conjunction with child restraint systems.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Transportation Services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Trip routing means the determination of the fixed routes to be traveled on a regular basis for the purpose of transporting children to and from the Head Start or Early Head Start program or activities.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58535, Oct. 4, 2006]

Subpart B—Transportation Requirements

§ 1310.10 General.

(a) Each agency must assist as many families as possible who need transportation in order for their children to attend the program in obtaining that transportation.

(b) When an agency has decided not to provide transportation services, either for all or a portion of the children, it must provide reasonable assistance to the families of such children to arrange transportation to and from its activities. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.

(c) Each agency providing transportation services is responsible for compliance with the applicable requirements of this Part. When an agency provides transportation through another organization or an individual, the agency must ensure the compliance of the transportation provider with the requirements of this part.

(d) Each agency providing transportation services, must ensure that each vehicle used in providing such services is equipped with:

(1) a communication system to call for assistance in case of an emergency:

(2) safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat and a sign indicating its location;

(3) a first aid kit and a sign indicating the location of such equipment; and

(4) a seat belt cutter for use in an emergency evacuation and a sign indicating its location.

(e) Each agency providing transportation services must ensure that any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under §1310.13(a) of this subpart.

(f) Each agency providing transportation services must ensure that all accidents involving vehicles that transport children receiving such services are reported in accordance with applicable State requirements.

(g) Each agency must ensure that children are only released to a parent or legal guardian, or other individual identified in writing by the parent or legal guardian. This regulation applies when children are not transported and are picked up from the classroom, as well as when they are dropped off by a vehicle Agencies must maintain lists of the persons, including alternates in case of emergency, and up-to-date child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the vehicle at the end of the route.

§ 1310.11 Child Restraint Systems.

(a) Effective June 21, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

(b) [Reserved]

[69 FR 2517, Jan. 16, 2004, as amended at 71 FR 58535, Oct. 4, 2006]

§ 1310.12 Required use of School Buses or Allowable Alternate Vehicles.

(a) Effective December 30, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(b) Effective February 20, 2001, each Head Start and Early Head Start agency receiving permission from the responsible HHS official to purchase a vehicle with grant funds for use in providing transportation services to children in its program or a delegate agency's program must ensure that the funds are used to purchase a vehicle that is either a school bus or an allowable alternate vehicle and is equipped

(1) for use of height- and weight-appropriate child restraint systems; and

(2) with a reverse beeper.

(c) As provided in 45 CFR 1310.2(a), paragraph (b) of this section does not apply to vehicles purchased for use in transporting children served under the home-based option for Head Start and Early Head Start.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58535, Oct. 4, 2006]

§ 1310.13 Maintenance of vehicles.

Each agency providing transportation services must ensure that vehicles used to provide such services are maintained in safe operating condition at all times. The organization operating the vehicle must establish and implement procedures for:

(a) a thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;

(b) systematic preventive maintenance on such vehicles; and

(c) daily pre-trip inspection of the vehicles by the driver.

§ 1310.14 Inspection of new vehicles at the time of delivery.

Each agency providing transportation services must ensure that bid announcements for school buses and allowable alternate vehicles for use in transporting children in its program include the correct specifications and a clear statement of the vehicle's intended use. Such agencies must ensure that there is a prescribed procedure for examining such vehicles at the time of delivery to ensure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with

the applicable FMVSS is included with the vehicle.

§ 1310.15 Operation of vehicles.

Each agency providing transportation services, either directly or through an arrangement with another organization or an individual, to children enrolled in its program must ensure that:

(a) Effective October 1, 2006, on a vehicle equipped for use of such devices, any child enrolled in a Head Start or Early Head Start program is seated in a child restraint system appropriate to the child's height and weight while the vehicle is in motion.

(b) Baggage and other items transported in the passenger compartment are properly stored and secured and the aisles remain clear and the doors and emergency exits remain unobstructed at all times.

(c) Effective June 21, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(d) Except for bus monitors who are assisting children, all vehicle occupants must be seated and wearing height- and weight- appropriate safety restraints while the vehicle is in motion.

[66 FR 5311, Jan. 18, 2001, as amended at 69 FR 2517, Jan. 16, 2004; 71 FR 58535, Oct. 4, 2006]

§ 1310.16 Driver qualifications.

(a) Each agency providing transportation services must ensure that persons who drive vehicles used to provide such services, at a minimum:

(1) in States where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and

(2) meet any physical, mental, and other requirements established under applicable law or regulations as necessary to perform job-related functions with any necessary reasonable accommodations.

(b) Each agency providing transportation services must ensure that there is an applicant review process for use in hiring drivers, that applicants for driver positions must be advised of the specific background checks required at the time application is made, and that there are criteria for the rejection of unacceptable applicants. The applicant review procedure must include, at minimum:

(1) all elements specified in 45 CFR 1304.52(b), with additional disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) a check of the applicant's driving record through the appropriate State agency, including a check of the applicant's record through the National Driver Register, if available in the State; and

(3) after a conditional offer of employment to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(c) As provided in 45 CFR 1310.2(a), this section does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

§ 1310.17 Driver and bus monitor training.

(a) Each agency providing transportation services must ensure that persons employed to drive vehicles used in providing such services will have received the training required under paragraphs (b) and (c) of this section no later than 90 days after the effective date of this section as established by § 1310.2 of this part. The agency must ensure that drivers who are hired to drive vehicles used in providing transportation services after the close of the 90 day period must receive the training required under paragraphs (b) and (c) prior to transporting any child enrolled in the agency's program. The agency must further ensure that at least annually after receiving the training required under paragraphs (b) and (c), all

drivers who drive vehicles used to provide such services receive the training required under paragraph (d) of this section.

(b) Drivers must receive a combination of classroom instruction and behind-the-wheel instruction sufficient to enable each driver to:

(1) operate the vehicle in a safe and efficient manner;

(2) safely run a fixed route, including loading and unloading children, stopping at railroad crossings and performing other specialized driving maneuvers;

(3) administer basic first aid in case of injury;

(4) handle emergency situations, including vehicle evacuation procedures;

(5) operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints;

(6) conduct routine maintenance and safety checks of the vehicle; and

(7) maintain accurate records as necessary.

(c) Drivers must also receive instruction on the topics listed in 45 CFR 1304.52(k)(1), (2) and (3)(i) and the provisions of the Head Start Program Performance Standards for Children with Disabilities (45 CFR 1308) relating to transportation services for children with disabilities.

(d) Drivers must receive refresher training courses including the topics listed in paragraphs (b) and (c) of this section and any additional necessary training to meet the requirements applicable in the State where the agency operates.

(e) Each agency providing transportation services must ensure that drivers who transport children receiving the services qualify under the applicable driver training requirements in its State.

(f) Each agency providing transportation services must ensure that:

(1) the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance; and

(2) before bus monitors assigned to vehicles used to provide such services begin their duties, they are trained on child boarding and exiting procedure, use of child restraint systems, any required paperwork, responses to emergencies, emergency evacuation procedures, use of special equipment, child pick-up and release procedures and pre- and post-trip vehicle check.

Subpart C—Special Requirements

§ 1310.20 Trip routing.

(a) Each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration.

(b) The agency must also ensure that the following basic principles of trip routing are adhered to:

(1) The time a child is in transit to and from the Head Start or Early Head Start program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical.

(2) Vehicles must not be loaded beyond the maximum passenger capacity at any time.

(3) Vehicles must not be required to back up or make ''U'' turns, except when necessary for reasons of safety or because of physical barriers.

(4) Stops must be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.

(5) When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle.

(6) If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult.

(7) Specific procedures must be established for use of alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing. In selecting among alternatives, transportation providers must choose routes that comply as much as possible with the requirements of this section.

§ 1310.21 Safety education.

(a) Each agency must provide training for parents and children in pedestrian safety. The training provided to

children must be developmentally appropriate and an integral part of program experiences. The need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children. The required transportation and pedestrian safety education of children and parents, except for the bus evacuation drills required by paragraph (d) of this section, must be provided within the first thirty days of the program year.

(b) Each agency providing transportation services, directly or through another organization or an individual, must ensure that children who receive such services are taught:

(1) safe riding practices;

(2) safety procedures for boarding and leaving the vehicle;

(3) safety procedures in crossing the street to and from the vehicle at stops;

(4) recognition of the danger zones around the vehicle; and

(5) emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(c) Each agency providing transportation services must provide training for parents that:

(1) emphasizes the importance of escorting their children to the vehicle stop and the importance of reinforcing the training provided to children regarding vehicle safety; and

(2) complements the training provided to their children so that safety practices can be reinforced both in Head Start and at home by the parent.

(d) Each agency providing transportation services must ensure that at least two bus evacuation drills in addition to the one required under paragraph (b)(5) of this section are conducted during the program year.

(e) Each agency providing transportation services must develop activities to remind children of the safety procedures. These activities must be developmentally appropriate, individualized and be an integral part of the Head Start or Early Head Start program activities.

§ 1310.22 Children with disabilities.

(a) Effective December 30, 2006 each agency must ensure that there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) Each Head Start, Early Head Start and delegate agency must ensure compliance with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), the HHS regulations at 45 CFR part 84, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they apply to transportation services.

(c) Each agency must specify any special transportation requirements for a child with a disability when preparing the child's Individual Education Plan (IEP) or Individual Family Service Plan (IFSP), and ensure that in all cases special transportation requirements in a child's IEP or IFSP are followed, including:

(1) special pick-up and drop-off requirements;

(2) special seating requirements;

(3) special equipment needs;

(4) any special assistance that may be required; and

(5) any special training for bus drivers and monitors.

[66 FR 5311, Jan. 18, 2001, as amended at 71 FR 58536, Oct. 4, 2006]

§ 1310.23 Coordinated transportation.

(a) Each agency providing transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(b) At a minimum, the agency must:

(1) identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;

(2) explore the option of participating in any coordinated public or private transportation systems existing in the community; and

(3) where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where reasonable, to participate in the establishment of a local transportation coordinating council.

PART 1311—HEAD START FELLOWS PROGRAM

Sec.

1311.1 Head Start Fellows Program purpose.
1311.2 Definitions.
1311.3 Application process.
1311.4 Qualifications, selection, and placement.
1311.5 Duration of Fellowships and status of Head Start Fellows.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 62 FR 1400, Jan. 10, 1997, unless otherwise noted.

§ 1311.1 Head Start Fellows Program Purpose.

(a) This part establishes regulations implementing section 648A(d) of the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*, applicable to the administration of the Head Start Fellows Program, including selection, placement, duration and status of the Head Start Fellows.

(b) As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

§ 1311.2 Definitions.

As used in this part:

Act means the Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

Associate Commissioner means the Associate Commissioner of the Head Start Bureau in the Administration on Children, Youth and Families.

Head Start Fellows means individuals who participate in the Head Start Fellows Program, who may be staff in local Head Start programs or other individuals working in the field of child development and family services.

§ 1311.3 Application process.

An individual who wishes to obtain a Fellowship must submit an application to the Associate Commissioner. The Administration for Children and Families will publish an annual announcement of the availability and number of Fellowships in the FEDERAL REGISTER. Federal employees are not eligible to apply. (The information collection requirement contained in this section is approved under OMB Control Number 0970–0140.)

§ 1311.4 Qualifications, selection, and placement.

(a) The Act specifies that an applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed. The Associate Commissioner will make the final selection of the Head Start Fellows.

(b) Head Start Fellows may be placed in:

(1) The Head Start national and regional offices;

(2) Local Head Start agencies and programs;

(3) Institutions of higher education;

(4) Public or private entities and organizations concerned with services to children and families; and

(5) Other appropriate settings.

(c) A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies.

(d) Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence Federal, State or local legislation.

§ 1311.5 Duration of Fellowships and status of Head Start Fellows.

(a) Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(b) For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the Federal Government.

(c) Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the Federal Government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

EFFECTIVE DATE NOTE: At 81 FR 61412, Sept. 6, 2016, Chapter XIII, Subchapter B (Parts 1300–1305) was revised, effective Nov. 7, 2016. For the convenience of the user, the revised text is set forth as follows:

SUBCHAPTER B—THE ADMINISTRATION FOR CHILDREN AND FAMILIES, HEAD START PROGRAM

PART 1301—PROGRAM GOVERNANCE

Sec.

1301.1 Purpose.
1301.2 Governing body.
1301.3 Policy council and policy committee.
1301.4 Parent committees.
1301.5 Training.
1301.6 Impasse procedures.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

§ 1301.1 In general.

An agency, as defined in part 1305 of this chapter, must establish and maintain a formal structure for program governance that includes a governing body, a policy council at the agency level and policy committee at the delegate level, and a parent committee. Governing bodies have a legal and fiscal responsibility to administer and oversee the agency's Head Start and Early Head Start programs. Policy councils are responsible for the direction of the agency's Head Start and Early Head Start programs.

§ 1301.2 Governing body.

(a) *Composition.* The composition of a governing body must be in accordance with the requirements specified at section 642(c)(1)(B) of the Act, except where specific exceptions are authorized in the case of public entities at section 642(c)(1)(D) of the Act. Agencies must ensure members of the governing body do not have a conflict of interest, pursuant to section 642(c)(1)(C) of the Act.

(b) *Duties and responsibilities.* (1) The governing body is responsible for activities specified at section 642(c)(1)(E) of the Act.

(2) The governing body must use ongoing monitoring results, data on school readiness goals, other information described in § 1302.102, and information described at section 642(d)(2) of the Act to conduct its responsibilities.

(c) *Advisory committees.* (1) A governing body may establish advisory committees as it deems necessary for effective governance and improvement of the program.

(2) If a governing body establishes an advisory committee to oversee key responsibilities related to program governance, it must:

(i) Establish the structure, communication, and oversight in such a way that the governing body continues to maintain its legal and fiscal responsibility for the Head Start agency; and,

(ii) Notify the responsible HHS official of its intent to establish such an advisory committee.

§ 1301.3 Policy council and policy committee.

(a) *Establishing policy councils and policy committees.* Each agency must establish and maintain a policy council responsible for the direction of the Head Start program at the agency level, and a policy committee at the delegate level. If an agency delegates operational responsibility for the entire Head Start or Early Head Start program to one delegate agency, the policy council and policy committee may be the same body.

(b) *Composition.* (1) A program must establish a policy council in accordance with section 642(c)(2)(B) of the Act, or a policy committee at the delegate level in accordance with section 642(c)(3) of the Act, as early in the program year as possible. Parents of children currently enrolled in each program option must be proportionately represented on the policy council and on the policy committee at the delegate level.

(2) The program must ensure members of the policy council, and of the policy committee at the delegate level, do not have a conflict of interest pursuant to sections 642(c)(2)(C) and 642(c)(3)(B) of the Act. Staff may not serve on the policy council or policy committee at the delegate level except parents who occasionally substitute as staff. In the case of tribal grantees, this exclusion applies only to tribal staff who work in areas directly related to or which directly impact administrative, fiscal, or programmatic issues.

(c) *Duties and responsibilities.* (1) A policy council is responsible for activities specified at section 642(c)(2)(D) of the Act. A policy

committee must approve and submit to the delegate agency its decisions in each of the following areas referenced at section 642(c)(2)(D)(i) through (vii) of the Act.

(2) A policy council, and a policy committee at the delegate level, must use ongoing monitoring results, data on school readiness goals, other information described in §1302.102, and information described in section 642(d)(2) of the Act to conduct its responsibilities.

(d) *Term.* (1) A member will serve for one year.

(2) If the member intends to serve for another year, s/he must stand for re-election.

(3) The policy council, and policy committee at the delegate level, must include in its bylaws how many one-year terms, not to exceed five terms, a person may serve.

(4) A program must seat a successor policy council, or policy committee at the delegate level, before an existing policy council, or policy committee at the delegate level, may be dissolved.

(e) *Reimbursement.* A program must enable low-income members to participate fully in their policy council or policy committee responsibilities by providing, if necessary, reimbursements for reasonable expenses incurred by the low-income members.

§1301.4 Parent committees.

(a) *Establishing parent committees.* A program must establish a parent committee comprised exclusively of parents of currently enrolled children as early in the program year as possible. This committee must be established at the center level for center-based programs and at the local program level for other program options. When a program operates more than one option, parents may choose to have a separate committee for each option or combine membership. A program must ensure that parents of currently enrolled children understand the process for elections to the policy council or policy committee and other leadership opportunities.

(b) *Requirements of parent committees.* Within the parent committee structure, a program may determine the best methods to engage families using strategies that are most effective in their community, as long as the program ensures the parent committee carries out the following minimum responsibilities:

(1) Advise staff in developing and implementing local program policies, activities, and services to ensure they meet the needs of children and families;

(2) Have a process for communication with the policy council and policy committee; and

(3) Within the guidelines established by the governing body, policy council or policy committee, participate in the recruitment and screening of Early Head Start and Head Start employees.

§1301.5 Training.

An agency must provide appropriate training and technical assistance or orientation to the governing body, any advisory committee members, and the policy council, including training on program performance standards and training indicated in §1302.12(m) to ensure the members understand the information they receive and can effectively oversee and participate in the programs in the Head Start agency.

§1301.6 Impasse procedures.

(a) To facilitate meaningful consultation and collaboration about decisions of the governing body and the policy council, each agency's governing body and policy council jointly must establish written procedures for resolving internal disputes between the governing board and policy council in a timely manner that include impasse procedures. These procedures must:

(1) Demonstrate that the governing body considers proposed decisions from the policy council and that the policy council considers proposed decisions from the governing body;

(2) If there is a disagreement, require the governing body and the policy council to notify the other in writing why it does not accept a decision; and,

(3) Describe a decision-making process and a timeline to resolve disputes and reach decisions that are not arbitrary, capricious, or illegal.

(b) If the agency's decision-making process does not result in a resolution and an impasse continues, the governing body and policy council must select a mutually agreeable third party mediator and participate in a formal process of mediation that leads to a resolution of the dispute.

(c) For all programs except American Indian and Alaska Native programs, if no resolution is reached with a mediator, the governing body and policy council must select a mutually agreeable arbitrator whose decision is final.

PART 1302—PROGRAM OPERATIONS

Sec.

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1302.101 Management system.
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AUTHORITY: 42 U.S.C. 9801 *et seq.*

§ 1302.1 Overview.

This part implements these statutory requirements in Sections 641A, 645, 645A, and 648A of the Act by describing all of the program performance standards that are required to operate Head Start, Early Head Start, American Indian and Alaska Native and Migrant or Seasonal Head Start programs. The part covers the full range of operations from enrolling eligible children and providing program services to those children and their families, to managing programs to ensure staff are qualified and supported to effectively provide services. This part also focuses on using data through ongoing program improvement to ensure high-quality service. As required in the Act, these provisions do not narrow the scope or quality of services covered in previous regulations. Instead, these regulations raise the quality standard to reflect science and best practices, and streamline and simplify requirements so programs can better understand what is required for quality services.

Subpart A—Eligibility, Recruitment, Selection, Enrollment, and Attendance

§ 1302.10 Purpose.

This subpart describes requirements of grantees for determining community strengths, needs and resources as well as recruitment areas. It contains requirements and procedures for the eligibility determination, recruitment, selection, enrollment and attendance of children and explains the policy concerning the charging of fees.

§ 1302.11 Determining community strengths, needs, and resources.

(a) *Service area.* (1) A program must propose a service area in the grant application and define the area by county or sub-county area, such as a municipality, town or census

tract or jurisdiction of a federally recognized Indian reservation.

(i) A tribal program may propose a service area that includes areas where members of Indian tribes or those eligible for such membership reside, including but not limited to Indian reservation land, areas designated as near-reservation by the Bureau of Indian Affairs (BIA) provided that the service area is approved by the tribe's governing council, Alaska Native Villages, Alaska Native Regional Corporations with land-based authorities, Oklahoma Tribal Statistical Areas, and Tribal Designated Statistical Areas where federally recognized Indian tribes do not have a federally established reservation.

(ii) If the tribe's service area includes any area specified in paragraph (a)(1)(i) of this section, and that area is also served by another program, the tribe may serve children from families who are members of or eligible to be members of such tribe and who reside in such areas as well as children from families who are not members of the tribe, but who reside within the tribe's established service area.

(2) If a program decides to change the service area after ACF has approved its grant application, the program must submit to ACF a new service area proposal for approval.

(b) *Community wide strategic planning and needs assessment (community assessment).* (1) To design a program that meets community needs, and builds on strengths and resources, a program must conduct a community assessment at least once over the five-year grant period. The community assessment must use data that describes community strengths, needs, and resources and include, at a minimum:

(i) The number of eligible infants, toddlers, preschool age children, and expectant mothers, including their geographic location, race, ethnicity, and languages they speak, including:

(A) Children experiencing homelessness in collaboration with, to the extent possible, McKinney-Vento Local Education Agency Liaisons (42 U.S.C. 11432 (6)(A));

(B) Children in foster care; and

(C) Children with disabilities, including types of disabilities and relevant services and resources provided to these children by community agencies;

(ii) The education, health, nutrition and social service needs of eligible children and their families, including prevalent social or economic factors that impact their well-being;

(iii) Typical work, school, and training schedules of parents with eligible children;

(iv) Other child development, child care centers, and family child care programs that serve eligible children, including home visiting, publicly funded state and local preschools, and the approximate number of eligible children served;

(v) Resources that are available in the community to address the needs of eligible children and their families; and,

(vi) Strengths of the community.

(2) A program must annually review and update the community assessment to reflect any significant changes including increased availability of publicly-funded pre-kindergarten- (including an assessment of how the pre-kindergarten available in the community meets the needs of the parents and children served by the program, and whether it is offered for a full school day), rates of family and child homelessness, and significant shifts in community demographics and resources.

(3) A program must consider whether the characteristics of the community allow it to include children from diverse economic backgrounds that would be supported by other funding sources, including private pay, in addition to the program's eligible funded enrollment. A program must not enroll children from diverse economic backgrounds if it would result in a program serving less than its eligible funded enrollment.

§ 1302.12 Determining, verifying, and documenting eligibility.

(a) *Process overview.* (1) Program staff must:

(i) Conduct an in-person interview with each family, unless paragraph (a)(2) of this section applies;

(ii) Verify information as required in paragraphs (h) and (i) of this section; and,

(iii) Create an eligibility determination record for enrolled participants according to paragraph (k) of this section.

(2) Program staff may interview the family over the telephone if an in-person interview is not possible or convenient for the family.

(3) If a program has an alternate method to reasonably determine eligibility based on its community assessment, geographic and administrative data, or from other reliable data sources, it may petition the responsible HHS official to waive requirements in paragraphs (a)(1)(i) and (ii) of this section.

(b) *Age requirements.* (1) For Early Head Start, except when the child is transitioning to Head Start, a child must be an infant or a toddler younger than three years old.

(2) For Head Start, a child must:

(i) Be at least three years old or, turn three years old by the date used to determine eligibility for public school in the community in which the Head Start program is located; and,

(ii) Be no older than the age required to attend school.

(3) For Migrant or Seasonal Head Start, a child must be younger than compulsory school age by the date used to determine public school eligibility for the community in which the program is located.

(c) *Eligibility requirements.* (1) A pregnant woman or a child is eligible if:

(i) The family's income is equal to or below the poverty line; or,

(ii) The family is eligible for or, in the absence of child care, would be potentially eligible for public assistance; including TANF child-only payments; or,

(iii) The child is homeless, as defined in part 1305; or,

(iv) The child is in foster care.

(2) If the family does not meet a criterion under paragraph (c)(1) of this section, a program may enroll a child who would benefit from services, provided that these participants only make up to 10 percent of a program's enrollment in accordance with paragraph (d) of this section.

(d) *Additional allowances for programs.* (1) A program may enroll an additional 35 percent of participants whose families do not meet a criterion described in paragraph (c) of this section and whose incomes are below 130 percent of the poverty line, if the program:

(i) Establishes and implements outreach, and enrollment policies and procedures to ensure it is meeting the needs of eligible pregnant women, children, and children with disabilities, before serving pregnant women or children who do not meet the criteria in paragraph (c) of this section; and,

(ii) Establishes criteria that ensure pregnant women and children eligible under the criteria listed in paragraph (c) of this section are served first.

(2) If a program chooses to enroll participants who do not meet a criterion in paragraph (c) of this section, and whose family incomes are between 100 and 130 percent of the poverty line, it must be able to report to the Head Start regional program office:

(i) How it is meeting the needs of low-income families or families potentially eligible for public assistance, homeless children, and children in foster care, and include local demographic data on these populations;

(ii) Outreach and enrollment policies and procedures that ensure it is meeting the needs of eligible children or pregnant women, before serving over-income children or pregnant women;

(iii) Efforts, including outreach, to be fully enrolled with eligible pregnant women or children;

(iv) Policies, procedures, and selection criteria it uses to serve eligible children;

(v) Its current enrollment and its enrollment for the previous year;

(vi) The number of pregnant women and children served, disaggregated by the eligibility criteria in paragraphs (c) and (d)(1) of this section; and,

(vii) The eligibility criteria category of each child on the program's waiting list.

(e) *Additional allowances for Indian tribes.* (1) Notwithstanding paragraph (c)(2) of this section, a tribal program may fill more than 10 percent of its enrollment with participants who are not eligible under the criteria in paragraph (c) of this section, if:

(i) The tribal program has served all eligible pregnant women or children who wish to be enrolled from Indian and non-Indian families living within the approved service area of the tribal agency;

(ii) The tribe has resources within its grant, without using additional funds from HHS intended to expand Early Head Start or Head Start services, to enroll pregnant women or children whose family incomes exceed low-income guidelines or who are not otherwise eligible; and,

(iii) At least 51 percent of the program's participants meet an eligibility criterion under paragraph (c)(1) of this section.

(2) If another program does not serve the approved service area, the program must serve all eligible Indian and non-Indian pregnant women or children who wish to enroll before serving over-income pregnant women or children.

(3) A program that meets the conditions of this paragraph (e) must annually set criteria that are approved by the policy council and the tribal council for selecting over-income pregnant women or children who would benefit from program services.

(4) An Indian tribe or tribes that operates both an Early Head Start program and a Head Start program may, at its discretion, at any time during the grant period involved, reallocate funds between the Early Head Start program and the Head Start program in order to address fluctuations in client populations, including pregnant women and children from birth to compulsory school age. The reallocation of such funds between programs by an Indian tribe or tribes during a year may not serve as a basis for any reduction of the base grant for either program in succeeding years.

(f) *Migrant or Seasonal eligibility requirements.* A child is eligible for Migrant or Seasonal Head Start, if the family meets an eligibility criterion in paragraphs (c) and (d) of this section; and the family's income comes primarily from agricultural work.

(g) *Eligibility requirements for communities with 1,000 or fewer individuals.* (1) A program may establish its own criteria for eligibility provided that it meets the criteria outlined in section 645(a)(2) of the Act.

(2) No child residing in such community whose family is eligible under criteria described in paragraphs (c) through (f) of this section, may be denied an opportunity to participate in the program under the eligibility criteria established under this paragraph (g).

(h) *Verifying age.* Program staff must verify a child's age according to program policies and procedures. A program's policies and procedures cannot require families to provide documents that confirm a child's age, if

doing so creates a barrier for the family to enroll the child.

(i) *Verifying eligibility.* (1) To verify eligibility based on income, program staff must use tax forms, pay stubs, or other proof of income to determine the family income for the relevant time period.

(i) If the family cannot provide tax forms, pay stubs, or other proof of income for the relevant time period, program staff may accept written statements from employers, including individuals who are self-employed, for the relevant time period and use information provided to calculate total annual income with appropriate multipliers.

(ii) If the family reports no income for the relevant time period, a program may accept the family's signed declaration to that effect, if program staff describes efforts made to verify the family's income, and explains how the family's total income was calculated or seeks information from third parties about the family's eligibility, if the family gives written consent. If a family gives consent to contact third parties, program staff must adhere to program safety and privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k)(2) of this section.

(iii) If the family can demonstrate a significant change in income for the relevant time period, program staff may consider current income circumstances.

(2) To verify whether a family is eligible for, or in the absence of child care, would be potentially eligible for public assistance, the program must have documentation from either the state, local, or tribal public assistance agency that shows the family either receives public assistance or that shows the family is potentially eligible to receive public assistance.

(3) To verify whether a family is homeless, a program may accept a written statement from a homeless services provider, school personnel, or other service agency attesting that the child is homeless or any other documentation that indicates homelessness, including documentation from a public or private agency, a declaration, information gathered on enrollment or application forms, or notes from an interview with staff to establish the child is homeless; or any other document that establishes homelessness.

(i) If a family can provide one of the documents described in this paragraph (i)(3), program staff must describe efforts made to verify the accuracy of the information provided and state whether the family is eligible because they are homeless.

(ii) If a family cannot provide one of the documents described in this paragraph (i)(3) to prove the child is homeless, a program may accept the family's signed declaration to that effect, if, in a written statement, program staff describe the child's living situation that meets the definition of homeless in part 1305 of this chapter.

(iii) Program staff may seek information from third parties who have firsthand knowledge about a family's living situation, if the family gives written consent. If the family gives consent to contact third parties, program staff must adhere to program privacy policies and procedures and ensure the eligibility determination record adheres to paragraph (k) of this section.

(4) To verify whether a child is in foster care, program staff must accept either a court order or other legal or government-issued document, a written statement from a government child welfare official that demonstrates the child is in foster care, or proof of a foster care payment.

(j) *Eligibility duration.* (1) If a child is determined eligible under this section and is participating in a Head Start program, he or she will remain eligible through the end of the succeeding program year except that the Head Start program may choose not to enroll a child when there are compelling reasons for the child not to remain in Head Start, such as when there is a change in the child's family income and there is a child with a greater need for Head Start services.

(2) Children who are enrolled in a program receiving funds under the authority of section 645A of the Act remain eligible while they participate in the program.

(3) If a child moves from an Early Head Start program to a Head Start program, program staff must verify the family's eligibility again.

(4) If a program operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the program's Early Head Start, the program must ensure, whenever possible, the child receives Head Start services until enrolled in school, provided the child is eligible.

(k) *Records.* (1) A program must keep eligibility determination records for each participant and ongoing records of the eligibility training for staff required by paragraph (m) of this section. A program may keep these records electronically.

(2) Each eligibility determination record must include:

(i) Copies of any documents or statements, including declarations, that are deemed necessary to verify eligibility under paragraphs (h) and (i) of this section;

(ii) A statement that program staff has made reasonable efforts to verify information by:

(A) Conducting either an in-person, or a telephone interview with the family as described under paragraph (a)(1)(i) or (a)(2) of this section; and,

(B) Describing efforts made to verify eligibility, as required under paragraphs (h) through (i) of this section; and, collecting

documents required for third party verification that includes the family's written consent to contact each third party, the third parties' names, titles, and affiliations, and information from third parties regarding the family's eligibility.

(iii) A statement that identifies whether:

(A) The family's income is below income guidelines for its size, and lists the family's size;

(B) The family is eligible for or, in the absence of child care, potentially eligible for public assistance;

(C) The child is a homeless child or the child is in foster care;

(D) The family was determined to be eligible under the criterion in paragraph (c)(2) of this section; or,

(E) The family was determined to be eligible under the criterion in paragraph (d)(1) of this section.

(3) A program must keep eligibility determination records for those currently enrolled, as long as they are enrolled, and, for one year after they have either stopped receiving services; or are no longer enrolled.

(l) *Program policies and procedures on violating eligibility determination regulations.* A program must establish written policies and procedures that describe all actions taken against staff who intentionally violate federal and program eligibility determination regulations and who enroll pregnant women and children that are not eligible to receive Early Head Start or Head Start services.

(m) *Training on eligibility.* (1) A program must train all governing body, policy council, management, and staff who determine eligibility on applicable federal regulations and program policies and procedures. Training must, at a minimum:

(i) Include methods on how to collect complete and accurate eligibility information from families and third party sources;

(ii) Incorporate strategies for treating families with dignity and respect and for dealing with possible issues of domestic violence, stigma, and privacy; and,

(iii) Explain program policies and procedures that describe actions taken against staff, families, or participants who attempt to provide or intentionally provide false information.

(2) A program must train management and staff members who make eligibility determinations within 90 days of hiring new staff.

(3) A program must train all governing body and policy council members within 180 days of the beginning of the term of a new governing body or policy council.

(4) A program must develop policies on how often training will be provided after the initial training.

§ 1302.13 Recruitment of children.

In order to reach those most in need of services, a program must develop and implement a recruitment process designed to actively inform all families with eligible children within the recruitment area of the availability of program services, and encourage and assist them in applying for admission to the program. A program must include specific efforts to actively locate and recruit children with disabilities and other vulnerable children, including homeless children and children in foster care.

§ 1302.14 Selection process.

(a) *Selection criteria.* (1) A program must annually establish selection criteria that weigh the prioritization of selection of participants, based on community needs identified in the community needs assessment as described in §1302.11(b), and including family income, whether the child is homeless, whether the child is in foster care, the child's age, whether the child is eligible for special education and related services, or early intervention services, as appropriate, as determined under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) and, other relevant family or child risk factors.

(2) If a program serves migrant or seasonal families, it must select participants according to criteria in paragraph (a)(1) of this section, and give priority to children whose families can demonstrate they have relocated frequently within the past two-years to pursue agricultural work.

(3) If a program operates in a service area where Head Start eligible children can enroll in high-quality publicly funded pre-kindergarten for a full school day, the program must prioritize younger children as part of the selection criteria in paragraph (a)(1) of this section. If this priority would disrupt partnerships with local education agencies, then it is not required. An American Indian and Alaska Native or Migrant or Seasonal Head Start program must consider whether such prioritization is appropriate in their community.

(4) A program must not deny enrollment based on a disability or chronic health condition or its severity.

(b) *Children eligible for services under IDEA.* (1) A program must ensure at least 10 percent of its total funded enrollment is filled by children eligible for services under IDEA, unless the responsible HHS official grants a waiver.

(2) If the requirement in paragraph (b)(1) of this section has been met, children eligible for services under IDEA should be prioritized for the available slots in accordance with the program's selection criteria described in paragraph (a) of this section.

(c) *Waiting lists.* A program must develop at the beginning of each enrollment year and maintain during the year a waiting list that ranks children according to the program's selection criteria.

§ 1302.15 Enrollment.

(a) *Funded enrollment.* A program must maintain its funded enrollment level and fill any vacancy as soon as possible. A program must fill any vacancy within 30 days.

(b) *Continuity of enrollment.* (1) A program must make efforts to maintain enrollment of eligible children for the following year.

(2) Under exceptional circumstances, a program may maintain a child's enrollment in Head Start for a third year, provided that family income is verified again. A program may maintain a child's enrollment in Early Head Start as described in § 1302.12(j)(2).

(3) If a program serves homeless children or children in foster care, it must make efforts to maintain the child's enrollment regardless of whether the family or child moves to a different service area, or transition the child to a program in a different service area, as required in § 1302.72(a), according to the family's needs.

(c) *Reserved slots.* If a program determines from the community assessment there are families experiencing homelessness in the area, or children in foster care that could benefit from services, the program may reserve one or more enrollment slots for pregnant women and children experiencing homelessness and children in foster care, when a vacancy occurs. No more than three percent of a program's funded enrollment slots may be reserved. If the reserved enrollment slot is not filled within 30 days, the enrollment slot becomes vacant and then must be filled in accordance with paragraph (a) of this section.

(d) *Other enrollment.* Children from diverse economic backgrounds who are funded with other sources, including private pay, are not considered part of a program's eligible funded enrollment.

(e) *State immunization enrollment requirements.* A program must comply with state immunization enrollment and attendance requirements, with the exception of homeless children as described in § 1302.16(c)(1).

(f) *Voluntary parent participation.* Parent participation in any program activity is voluntary, including consent for data sharing, and is not required as a condition of the child's enrollment.

§ 1302.16 Attendance.

(a) *Promoting regular attendance.* A program must track attendance for each child.

(1) A program must implement a process to ensure children are safe when they do not arrive at school. If a child is unexpectedly absent and a parent has not contacted the program within one hour of program start time, the program must attempt to contact the parent to ensure the child's well-being.

(2) A program must implement strategies to promote attendance. At a minimum, a program must:

(i) Provide information about the benefits of regular attendance;

(ii) Support families to promote the child's regular attendance;

(iii) Conduct a home visit or make other direct contact with a child's parents if a child has multiple unexplained absences (such as two consecutive unexplained absences); and,

(iv) Within the first 60 days of program operation, and on an ongoing basis thereafter, use individual child attendance data to identify children with patterns of absence that put them at risk of missing ten percent of program days per year and develop appropriate strategies to improve individual attendance among identified children, such as direct contact with parents or intensive case management, as necessary.

(3) If a child ceases to attend, the program must make appropriate efforts to reengage the family to resume attendance, including as described in paragraph (a)(2) of this section. If the child's attendance does not resume, then the program must consider that slot vacant. This action is not considered expulsion as described in § 1302.17.

(b) *Managing systematic program attendance issues.* If a program's monthly average daily attendance rate falls below 85 percent, the program must analyze the causes of absenteeism to identify any systematic issues that contribute to the program's absentee rate. The program must use this data to make necessary changes in a timely manner as part of ongoing oversight and correction as described in § 1302.102(b) and inform its continuous improvement efforts as described in § 1302.102(c).

(c) *Supporting attendance of homeless children.* (1) If a program determines a child is eligible under § 1302.12(c)(1)(iii), it must allow the child to attend for up to 90 days or as long as allowed under state licensing requirements, without immunization and other records, to give the family reasonable time to present these documents. A program must work with families to get children immunized as soon as possible in order to comply with state licensing requirements.

(2) If a child experiencing homelessness is unable to attend classes regularly because the family does not have transportation to and from the program facility, the program must utilize community resources, where possible, to provide transportation for the child.

§ 1302.17 Suspension and expulsion.

(a) *Limitations on suspension.* (1) A program must prohibit or severely limit the use of suspension due to a child's behavior. Such suspensions may only be temporary in nature.

(2) A temporary suspension must be used only as a last resort in extraordinary circumstances where there is a serious safety

threat that cannot be reduced or eliminated by the provision of reasonable modifications.

(3) Before a program determines whether a temporary suspension is necessary, a program must engage with a mental health consultant, collaborate with the parents, and utilize appropriate community resources—such as behavior coaches, psychologists, other appropriate specialists, or other resources—as needed, to determine no other reasonable option is appropriate.

(4) If a temporary suspension is deemed necessary, a program must help the child return to full participation in all program activities as quickly as possible while ensuring child safety by:

(i) Continuing to engage with the parents and a mental health consultant, and continuing to utilize appropriate community resources;

(ii) Developing a written plan to document the action and supports needed;

(iii) Providing services that include home visits; and,

(iv) Determining whether a referral to a local agency responsible for implementing IDEA is appropriate.

(b) *Prohibition on expulsion.* (1) A program cannot expel or unenroll a child from Head Start because of a child's behavior.

(2) When a child exhibits persistent and serious challenging behaviors, a program must explore all possible steps and document all steps taken to address such problems, and facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging a mental health consultant, considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation Act to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability, and consulting with the parents and the child's teacher, and:

(i) If the child has an individualized family service plan (IFSP) or individualized education program (IEP), the program must consult with the agency responsible for the IFSP or IEP to ensure the child receives the needed support services; or,

(ii) If the child does not have an IFSP or IEP, the program must collaborate, with parental consent, with the local agency responsible for implementing IDEA to determine the child's eligibility for services.

(3) If, after a program has explored all possible steps and documented all steps taken as described in paragraph (b)(2) of this section, a program, in consultation with the parents, the child's teacher, the agency responsible for implementing IDEA (if applicable), and the mental health consultant, determines that the child's continued enrollment presents a continued serious safety threat to the child or other enrolled children and determines the program is not the most appropriate placement for the child, the program must work with such entities to directly facilitate the transition of the child to a more appropriate placement.

§ 1302.18 Fees.

(a) *Policy on fees.* A program must not charge eligible families a fee to participate in Head Start, including special events such as field trips, and cannot in any way condition an eligible child's enrollment or participation in the program upon the payment of a fee.

(b) *Allowable fees.* (1) A program must only accept a fee from families of enrolled children for services that are in addition to services funded by Head Start, such as child care before or after funded Head Start hours. A program may not condition a Head Start child's enrollment on the ability to pay a fee for additional hours.

(2) In order to support programs serving children from diverse economic backgrounds or using multiple funding sources, a program may charge fees to private pay families and other non-Head Start enrolled families to the extent allowed by any other applicable federal, state or local funding sources.

Subpart B—Program Structure

§ 1302.20 Determining program structure.

(a) *Choose a program option.* (1) A program must choose to operate one or more of the following program options: Center-based, home-based, family child care, or an approved locally-designed variation as described in § 1302.24. The program option(s) chosen must meet the needs of children and families based on the community assessment described in § 1302.11(b). A Head Start program serving preschool-aged children may not provide only the option described in § 1302.22(a) and (c)(2).

(2) To choose a program option and develop a program calendar, a program must consider in conjunction with the annual review of the community assessment described in § 1302.11(b)(2), whether it would better meet child and family needs through conversion of existing slots to full school day or full working day slots, extending the program year, conversion of existing Head Start slots to Early Head Start slots as described in paragraph (c) of this section, and ways to promote continuity of care and services. A program must work to identify alternate sources to support full working day services. If no additional funding is available, program resources may be used.

(b) *Comprehensive services.* All program options must deliver the full range of services, as described in subparts C, D, E, F, and G of this part, except that §§ 1302.30 through 1302.32 and § 1302.34 do not apply to home-based options.

(c) *Conversion.* (1) Consistent with section 645(a)(5) of the Head Start Act, grantees may request to convert Head Start slots to Early Head Start slots through the re-funding application process or as a separate grant amendment.

(2) Any grantee proposing a conversion of Head Start services to Early Head Start services must obtain policy council and governing body approval and submit the request to their regional office.

(3) With the exception of American Indian and Alaska Native grantees as described in paragraph (c)(4) of this section, the request to the regional office must include:

(i) A grant application budget and a budget narrative that clearly identifies the funding amount for the Head Start and Early Head Start programs before and after the proposed conversion;

(ii) The results of the community assessment demonstrating how the proposed use of funds would best meet the needs of the community, including a description of how the needs of eligible Head Start children will be met in the community when the conversion takes places;

(iii) A revised program schedule that describes the program option(s) and the number of funded enrollment slots for Head Start and Early Head Start programs before and after the proposed conversion;

(iv) A description of how the needs of pregnant women, infants, and toddlers will be addressed;

(v) A discussion of the agency's capacity to carry out an effective Early Head Start program in accordance with the requirements of section 645A(b) of the Head Start Act and all applicable regulations;

(vi) Assurances that the agency will participate in training and technical assistance activities required of all Early Head Start grantees;

(vii) A discussion of the qualifications and competencies of the child development staff proposed for the Early Head Start program, as well as a description of the facilities and program infrastructure that will be used to support the new or expanded Early Head Start program;

(viii) A discussion of any one-time funding necessary to implement the proposed conversion and how the agency intends to secure such funding; and,

(ix) The proposed timetable for implementing this conversion, including updating school readiness goals as described in subpart J of this part.

(4) Consistent with section 645(d)(3) of the Act, any American Indian and Alaska Native grantee that operates both an Early Head Start program and a Head Start program may reallocate funds between the programs at its discretion and at any time during the grant period involved, in order to address fluctuations in client populations. An American Indian and Alaska Native program that exercises this discretion must notify the regional office.

(d) *Source of funding.* A program may consider hours of service that meet the Head Start Program Performance Standards, regardless of the source of funding, as hours of planned class operations for the purposes of meeting the Head Start and Early Head Start service duration requirements in this subpart.

§ 1302.21 Center-based option.

(a) *Setting.* The center-based option delivers the full range of services, consistent with § 1302.20(b). Education and child development services are delivered primarily in classroom settings.

(b) *Ratios and group size.* (1) Staff-child ratios and group size maximums must be determined by the age of the majority of children and the needs of children present. A program must determine the age of the majority of children in a class at the start of the year and may adjust this determination during the program year, if necessary. Where state or local licensing requirements are more stringent than the teacher-child ratios and group size specifications in this section, a program must meet the stricter requirements. A program must maintain appropriate ratios during all hours of program operation, except:

(i) For brief absences of a teaching staff member for no more than five minutes; and,

(ii) During nap time, one teaching staff member may be replaced by one staff member or trained volunteer who does not meet the teaching qualifications required for the age.

(2) An Early Head Start or Migrant or Seasonal Head Start class that serves children under 36 months old must have two teachers with no more than eight children, or three teachers with no more than nine children. Each teacher must be assigned consistent, primary responsibility for no more than four children to promote continuity of care for individual children. A program must minimize teacher changes throughout a child's enrollment, whenever possible, and consider mixed age group classes to support continuity of care.

(3) A class that serves a majority of children who are three years old must have no more than 17 children with a teacher and teaching assistant or two teachers. A double session class that serves a majority of children who are three years old must have no more than 15 children with a teacher and teaching assistant or two teachers.

(4) A class that serves a majority of children who are four and five years old must have no more than 20 children with a teacher and a teaching assistant or two teachers. A double session class that serves a majority of children who are four and five years old must

have no more than 17 children with a teacher and a teaching assistant or two teachers.

TABLE TO § 1302.21(b)—CENTER-BASED GROUP SIZE

4 and 5 year olds	No more than 20 children enrolled in any class. No more than 17 children enrolled in any double session class.
3 year olds	No more than 17 children enrolled in any class. No more than 15 children enrolled in any double session class.
Under 3 years old	No more than 8 or 9 children enrolled in any class, depending on the number of teachers.

(c) *Service duration*—(1) *Early Head Start.* (i) By August 1, 2018, a program must provide 1,380 annual hours of planned class operations for all enrolled children.

(ii) A program that is designed to meet the needs of young parents enrolled in school settings may meet the service duration requirements in paragraph (c)(1)(i) of this section if it operates a center-based program schedule during the school year aligned with its local education agency requirements and provides regular home-based services during the summer break.

(2) *Head Start.* (i) Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (v) of this section, a program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day.

(ii) Until a program is operating all of its Head Start center-based funded enrollment at the standard described in paragraph (c)(2)(iv) or (v) of this section, if a program operates a double session variation, it must provide classes for four days per week for a minimum of 128 days per year and 3.5 hours per day. Each double session class staff member must be provided adequate break time during the course of the day. In addition, teachers, aides, and volunteers must have appropriate time to prepare for each session together, to set up the classroom environment, and to give individual attention to children entering and leaving the center.

(iii) By August 1, 2019, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for at least 50 percent of its Head Start center-based funded enrollment.

(iv) By August 1, 2021, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for all of its Head Start center-based funded enrollment.

(v) A Head Start program providing fewer than 1,020 annual hours of planned class operations or fewer than eight months of service is considered to meet the requirements described in paragraphs (c)(2)(iii) and (iv) of this section if its program schedule aligns with the annual hours required by its local education agency for grade one and such alignment is necessary to support partnerships for service delivery.

(3) *Secretarial determination.* (i) On or before February 1, 2018, the Secretary may lower the required percentage described in paragraph (c)(2)(iii) of this section, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment; and,

(ii) On or before February 1, 2020, the Secretary may lower the required percentage described in paragraph (c)(2)(iv) of this section, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment.

(4) *Extension.* If an extension is necessary to ensure children enrolled in the program on November 7, 2016 are not displaced from the Early Head Start or Head Start program, a program may request a one-year extension from the responsible HHS official of the requirements outlined in paragraphs (c)(1) and (c)(2)(iii) of this section.

(5) *Exemption for Migrant or Seasonal Head Start programs.* A Migrant or Seasonal program is not subject to the requirements described in § 1302.21(c)(1) or (2), but must make every effort to provide as many days and hours of service as possible to each child and family.

(6) *Calendar planning.* A program must:

(i) Plan its year using a reasonable estimate of the number of days during a year that classes may be closed due to problems such as inclement weather; and,

(ii) Make every effort to schedule makeup days using existing resources if hours of planned class operations fall below the number required per year.

(d) *Licensing and square footage requirements.* (1) The facilities used by a program

must meet state, tribal, or local licensing requirements, even if exempted by the licensing entity. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision takes precedence.

(2) A center-based program must have at least 35 square feet of usable indoor space per child available for the care and use of children (exclusive of bathrooms, halls, kitchen, staff rooms, and storage places) and at least 75 square feet of usable outdoor play space per child.

(3) A program that operates two or more groups within an area must ensure clearly defined, safe divisions to separate groups. A program must ensure such spaces are learning environments that facilitate the implementation of the requirements in subpart C of this part. The divisions must limit noise transfer from one group to another to prevent disruption of an effective learning environment.

§ 1302.22 Home-based option.

(a) *Setting.* The home-based option delivers the full range of services, consistent with §1302.20(b), through visits with the child's parents, primarily in the child's home and through group socialization opportunities in a Head Start classroom, community facility, home, or on field trips. For Early Head Start programs, the home-based option may be used to deliver services to some or all of a program's enrolled children. For Head Start programs, the home-based option may only be used to deliver services to a portion of a program's enrolled children.

(b) *Caseload.* A program that implements a home-based option must maintain an average caseload of 10 to 12 families per home visitor with a maximum of 12 families for any individual home visitor.

(c) *Service duration*—(1) *Early Head Start.* By August 1, 2017, an Early Head Start home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 46 visits per year; and,

(ii) Provide, at a minimum, 22 group socialization activities distributed over the course of the program year.

(2) *Head Start.* A Head Start home-based program must:

(i) Provide one home visit per week per family that lasts at least an hour and a half and provide a minimum of 32 visits per year; and,

(ii) Provide, at a minimum, 16 group socialization activities distributed over the course of the program year.

(3) *Meeting minimum requirements.* A program that implements a home-based option must:

(i) Make up planned home visits or scheduled group socialization activities that were canceled by the program, and to the extent possible attempt to make up planned home visits canceled by the family, when this is necessary to meet the minimums described in paragraphs (c)(1) and (2) of this section; and,

(ii) Not replace home visits or scheduled group socialization activities for medical or social service appointments for the purposes of meeting the minimum requirements described in paragraphs (c)(1) and (2) of this section.

(d) *Safety requirements.* The areas for learning, playing, sleeping, toileting, preparing food, and eating in facilities used for group socializations in the home-based option must meet the safety standards described in §1302.47(1)(ii) through (viii).

§ 1302.23 Family child care option.

(a) *Setting.* The family child care program option delivers the full range of services, consistent with §1302.20(b). Education and child development services are primarily delivered by a family child care provider in their home or other family-like setting. A program may choose to offer the family child care option if:

(1) The program has a legally binding agreement with one or more family child care provider(s) that clearly defines the roles, rights, and responsibilities of each party, or the program is the employer of the family child care provider, and ensures children and families enrolled in this option receive the full range of services described in subparts C, D, E, F, and G of this part; and,

(2) The program ensures family child care homes are available that can accommodate children and families with disabilities.

(b) *Ratios and group size.* (1) A program that operates the family child care option where Head Start children are enrolled must ensure group size does not exceed the limits specified in this section. If the family child care provider's own children under the age of six are present, they must be included in the group size.

(2) When there is one family child care provider, the maximum group size is six children and no more than two of the six may be under 24 months of age. When there is a provider and an assistant, the maximum group size is twelve children with no more than four of the twelve children under 24 months of age.

(3) One family child care provider may care for up to four children younger than 36 months of age with a maximum group size of four children, and no more than two of the four children may be under 18 months of age.

(4) A program must maintain appropriate ratios during all hours of program operation. A program must ensure providers have systems to ensure the safety of any child not within view for any period. A program must make substitute staff and assistant providers

available with the necessary training and experience to ensure quality services to children are not interrupted.

(c) *Service duration.* Whether family child care option services are provided directly or via contractual arrangement, a program must ensure family child care providers operate sufficient hours to meet the child care needs of families and not less than 1,380 hours per year.

(d) *Licensing requirements.* A family child-care provider must be licensed by the state, tribal, or local entity to provide services in their home or family-like setting. When state, tribal, or local requirements vary from Head Start requirements, the most stringent provision applies.

(e) *Child development specialist.* A program that offers the family child care option must provide a child development specialist to support family child care providers and ensure the provision of quality services at each family child care home. Child development specialists must:

(1) Conduct regular visits to each home, some of which are unannounced, not less than once every two weeks;

(2) Periodically verify compliance with either contract requirements or agency policy;

(3) Facilitate ongoing communication between program staff, family child care providers, and enrolled families; and,

(4) Provide recommendations for technical assistance and support the family child care provider in developing relationships with other child care professionals.

§ 1302.24 Locally-designed program option variations.

(a) *Waiver option.* Programs may request to operate a locally-designed program option, including a combination of program options, to better meet the unique needs of their communities or to demonstrate or test alternative approaches for providing program services. In order to operate a locally-designed program option, programs must seek a waiver as described in this section and must deliver the full range of services, consistent with §1302.20(b), and demonstrate how any change to their program design is consistent with achieving program goals in subpart J of this part.

(b) *Request for approval.* A program's request to operate a locally-designed variation may be approved by the responsible HHS official through the end of a program's current grant or, if the request is submitted through a grant application for an upcoming project period, for the project period of the new award. Such approval may be revoked based on progress toward program goals as described in §1302.102 and monitoring as described in §1304.2.

(c) *Waiver requirements.* (1) The responsible HHS official may waive one or more of the requirements contained in §1302.21(b), (c)(1)(i), and (c)(2)(iii) and (iv); §1302.22(a) through (c); and §1302.23(b) and (c), but may not waive ratios or group size for children under 24 months. Center-based locally-designed options must meet the minimums described in section 640(k)(1) of the Act for center-based programs.

(2) If the responsible HHS official determines a waiver of group size for center-based services would better meet the needs of children and families in a community, the group size may not exceed the limits below:

(i) A group that serves children 24 to 36 months of age must have no more than ten children; and,

(ii) A group that serves predominantly three-year-old children must have no more than twenty children; and,

(iii) A group that serves predominantly four-year-old children must have no more than twenty-four children.

(3) If the responsible HHS official approves a waiver to allow a program to operate below the minimums described in §1302.21(c)(2)(iii) or (iv), a program must meet the requirements described in §1302.21(c)(2)(i), or in the case of a double session variation, a program must meet the requirements described in §1302.21(c)(2)(ii).

(4) In order to receive a waiver under this section, a program must provide supporting evidence that demonstrates the locally-designed variation effectively supports appropriate development and progress in children's early learning outcomes.

(5) In order to receive a waiver of service duration, a program must meet the requirement in paragraph (c)(4) of this section, provide supporting evidence that it better meets the needs of parents than the applicable service duration minimums described in §1302.21(c)(1) and (c)(2)(iii) and (iv), §1302.22(c), or §1302.23(c), and assess the effectiveness of the variation in supporting appropriate development and progress in children's early learning outcomes.

(d) *Transition from previously approved program options.* If, before November 7, 2016, a program was approved to operate a program option that is no longer allowable under §§1302.21 through 1302.23, a program may continue to operate that model until July 31, 2018.

Subpart C—Education and Child Development Program Services

§ 1302.30 Purpose.

All programs must provide high-quality early education and child development services, including for children with disabilities, that promote children's cognitive, social, and emotional growth for later success in school. A center-based or family child care program must embed responsive and effective teacher-child interactions. A home-based program must promote secure parent-

child relationships and help parents provide high-quality early learning experiences. All programs must implement a research-based curriculum, and screening and assessment procedures that support individualization and growth in the areas of development described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and support family engagement in children's learning and development. A program must deliver developmentally, culturally, and linguistically appropriate learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. To deliver such high-quality early education and child development services, a center-based or family child care program must implement, at a minimum, the elements contained in §§1302.31 through 1302.34, and a home-based program must implement, at a minimum, the elements in §§1302.33 and 1302.35.

§1302.31 Teaching and the learning environment.

(a) *Teaching and the learning environment.* A center-based and family child care program must ensure teachers and other relevant staff provide responsive care, effective teaching, and an organized learning environment that promotes healthy development and children's skill growth aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five,* including for children with disabilities. A program must also support implementation of such environment with integration of regular and ongoing supervision and a system of individualized and ongoing professional development, as appropriate. This includes, at a minimum, the practices described in paragraphs (b) through (e) of this section.

(b) *Effective teaching practices.* (1) Teaching practices must:

(i) Emphasize nurturing and responsive practices, interactions, and environments that foster trust and emotional security; are communication and language rich; promote critical thinking and problem-solving; social, emotional, behavioral, and language development; provide supportive feedback for learning; motivate continued effort; and support all children's engagement in learning experiences and activities;

(ii) Focus on promoting growth in the developmental progressions described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* by aligning with and using the Framework and the curricula as described in §1302.32 to direct planning of organized activities, schedules, lesson plans, and the implementation of high-quality early learning experiences that are responsive to and build upon each child's individual pattern of development and learning;

(iii) Integrate child assessment data in individual and group planning; and,

(iv) Include developmentally appropriate learning experiences in language, literacy, social and emotional development, math, science, social studies, creative arts, and physical development that are focused toward achieving progress outlined in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five.*

(2) For dual language learners, a program must recognize bilingualism and biliteracy as strengths and implement research-based teaching practices that support their development. These practices must:

(i) For an infant or toddler dual language learner, include teaching practices that focus on the development of the home language, when there is a teacher with appropriate language competency, and experiences that expose the child to English;

(ii) For a preschool age dual language learner, include teaching practices that focus on both English language acquisition and the continued development of the home language; or,

(iii) If staff do not speak the home language of all children in the learning environment, include steps to support the development of the home language for dual language learners such as having culturally and linguistically appropriate materials available and other evidence-based strategies. Programs must work to identify volunteers who speak children's home language/s who could be trained to work in the classroom to support children's continued development of the home language.

(c) *Learning environment.* A program must ensure teachers implement well-organized learning environments with developmentally appropriate schedules, lesson plans, and indoor and outdoor learning experiences that provide adequate opportunities for choice, play, exploration, and experimentation among a variety of learning, sensory, and motor experiences and:

(1) For infants and toddlers, promote relational learning and include individualized and small group activities that integrate appropriate daily routines into a flexible schedule of learning experiences; and,

(2) For preschool age children, include teacher-directed and child-initiated activities, active and quiet learning activities, and opportunities for individual, small group, and large group learning activities.

(d) *Materials and space for learning.* To support implementation of the curriculum and the requirements described in paragraphs (a), (b), (c), and (e) of this section a program must provide age-appropriate equipment, materials, supplies and physical space for indoor and outdoor learning environments, including functional space. The equipment, materials and supplies must include any necessary accommodations and the space must

be accessible to children with disabilities. Programs must change materials intentionally and periodically to support children's interests, development, and learning.

(e) *Promoting learning through approaches to rest, meals, routines, and physical activity.* (1) A program must implement an intentional, age appropriate approach to accommodate children's need to nap or rest, and that, for preschool age children in a program that operates for 6 hours or longer per day provides a regular time every day at which preschool age children are encouraged but not forced to rest or nap. A program must provide alternative quiet learning activities for children who do not need or want to rest or nap.

(2) A program must implement snack and meal times in ways that support development and learning. For bottle-fed infants, this approach must include holding infants during feeding to support socialization. Snack and meal times must be structured and used as learning opportunities that support teaching staff-child interactions and foster communication and conversations that contribute to a child's learning, development, and socialization. Programs are encouraged to meet this requirement with family style meals when developmentally appropriate. A program must also provide sufficient time for children to eat, not use food as reward or punishment, and not force children to finish their food.

(3) A program must approach routines, such as hand washing and diapering, and transitions between activities, as opportunities for strengthening development, learning, and skill growth.

(4) A program must recognize physical activity as important to learning and integrate intentional movement and physical activity into curricular activities and daily routines in ways that support health and learning. A program must not use physical activity as reward or punishment.

§ 1302.32 Curricula.

(a) *Curricula.* (1) Center-based and family child care programs must implement developmentally appropriate research-based early childhood curricula, including additional curricular enhancements, as appropriate that:

(i) Are based on scientifically valid research and have standardized training procedures and curriculum materials to support implementation;

(ii) Are aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and, as appropriate, state early learning and development standards; and are sufficiently content-rich to promote measurable progress toward development and learning outlined in the Framework; and,

(iii) Have an organized developmental scope and sequence that include plans and materials for learning experiences based on developmental progressions and how children learn.

(2) A program must support staff to effectively implement curricula and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(b) *Adaptation.* A program that chooses to make significant adaptations to a curriculum or a curriculum enhancement described in paragraph (a)(1) of this section to better meet the needs of one or more specific populations must use an external early childhood education curriculum or content area expert to develop such significant adaptations. A program must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals, consistent with the process described in § 1302.102(b) and (c). Programs are encouraged to partner with outside evaluators in assessing such adaptations.

§ 1302.33 Child screenings and assessments.

(a) *Screening.* (1) In collaboration with each child's parent and with parental consent, a program must complete or obtain a current developmental screening to identify concerns regarding a child's developmental, behavioral, motor, language, social, cognitive, and emotional skills within 45 calendar days of when the child first attends the program or, for the home-based program option, receives a home visit. A program that operates for 90 days or less must complete or obtain a current developmental screening within 30 calendar days of when the child first attends the program.

(2) A program must use one or more research-based developmental standardized screening tools to complete the screening. A program must use as part of the screening additional information from family members, teachers, and relevant staff familiar with the child's typical behavior.

(3) If warranted through screening and additional relevant information and with direct guidance from a mental health or child development professional a program must, with the parent's consent, promptly and appropriately address any needs identified through:

(i) Referral to the local agency responsible for implementing IDEA for a formal evaluation to assess the child's eligibility for services under IDEA as soon as possible, and not to exceed timelines required under IDEA; and,

(ii) Partnership with the child's parents and the relevant local agency to support families through the formal evaluation process.

(4) If a child is determined to be eligible for services under IDEA, the program must partner with parents and the local agency responsible for implementing IDEA, as appropriate, and deliver the services in subpart F of this part.

(5) If, after the formal evaluation described in paragraph (a)(3)(i) of this section, the local agency responsible for implementing IDEA determines the child is not eligible for early intervention or special education and related services under IDEA, the program must:

(i) Seek guidance from a mental health or child development professional to determine if the formal evaluation shows the child has a significant delay in one or more areas of development that is likely to interfere with the child's development and school readiness; and,

(ii) If the child has a significant delay, partner with parents to help the family access services and supports to help address the child's identified needs.

(A) Such additional services and supports may be available through a child's health insurance or it may be appropriate for the program to provide needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act, to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705(9)(b) of the Rehabilitation Act is not excluded from the program on the basis of disability.

(B) A program may use program funds for such services and supports when no other sources of funding are available.

(b) *Assessment for individualization.* (1) A program must conduct standardized and structured assessments, which may be observation-based or direct, for each child that provide ongoing information to evaluate the child's developmental level and progress in outcomes aligned to the goals described in the *Head Start Early Learning Child Outcomes Framework: Ages Birth to Five.* Such assessments must result in usable information for teachers, home visitors, and parents and be conducted with sufficient frequency to allow for individualization within the program year.

(2) A program must regularly use information from paragraph (b)(1) of this section along with informal teacher observations and additional information from family and staff, as relevant, to determine a child's strengths and needs, inform and adjust strategies to better support individualized learning and improve teaching practices in center-based and family child care settings, and improve home visit strategies in home-based models.

(3) If warranted from the information gathered from paragraphs (b)(1) and (2) of this section and with direct guidance from a mental health or child development professional and a parent's consent, a program must refer the child to the local agency responsible for implementing IDEA for a formal evaluation to assess a child's eligibility for services under IDEA.

(c) *Characteristics of screenings and assessments.* (1) Screenings and assessments must be valid and reliable for the population and purpose for which they will be used, including by being conducted by qualified and trained personnel, and being age, developmentally, culturally and linguistically appropriate, and appropriate for children with disabilities, as needed.

(2) If a program serves a child who speaks a language other than English, a program must use qualified bilingual staff, contractor, or consultant to:

(i) Assess language skills in English and in the child's home language, to assess both the child's progress in the home language and in English language acquisition;

(ii) Conduct screenings and assessments for domains other than language skills in the language or languages that best capture the child's development and skills in the specific domain; and,

(iii) Ensure those conducting the screening or assessment know and understand the child's language and culture and have sufficient skill level in the child's home language to accurately administer the screening or assessment and to record and understand the child's responses, interactions, and communications.

(3) If a program serves a child who speaks a language other than English and qualified bilingual staff, contractors, or consultants are not able to conduct screenings and assessments, a program must use an interpreter in conjunction with a qualified staff person to conduct screenings and assessments as described in paragraphs (c)(2)(i) through (iii) of this section.

(4) If a program serves a child who speaks a language other than English and can demonstrate that there is not a qualified bilingual staff person or interpreter, then screenings and assessments may be conducted in English. In such a case, a program must also gather and use other information, including structured observations over time and information gathered in a child's home language from the family, for use in evaluating the child's development and progress.

(d) *Prohibitions on use of screening and assessment data.* The use of screening and assessment items and data on any screening or assessment authorized under this subchapter by any agent of the federal government is prohibited for the purposes of ranking, comparing, or otherwise evaluating individual children for purposes other than research, training, or technical assistance, and is prohibited for the purposes of providing rewards or sanctions for individual children or staff.

A program must not use screening or assessments to exclude children from enrollment or participation.

§ 1302.34 Parent and family engagement in education and child development services.

(a) *Purpose.* Center-based and family child care programs must structure education and child development services to recognize parents' roles as children's lifelong educators, and to encourage parents to engage in their child's education.

(b) *Engaging parents and family members.* A program must offer opportunities for parents and family members to be involved in the program's education services and implement policies to ensure:

(1) The program's settings are open to parents during all program hours;

(2) Teachers regularly communicate with parents to ensure they are well-informed about their child's routines, activities, and behavior;

(3) Teachers hold parent conferences, as needed, but no less than two times per program year, to enhance the knowledge and understanding of both staff and parents of the child's education and developmental progress and activities in the program;

(4) Parents have the opportunity to learn about and to provide feedback on selected curricula and instructional materials used in the program;

(5) Parents and family members have opportunities to volunteer in the class and during group activities;

(6) Teachers inform parents, about the purposes of and the results from screenings and assessments and discuss their child's progress;

(7) Teachers, except those described in paragraph (b)(8) of this section, conduct at least two home visits per program year for each family, including one before the program year begins, if feasible, to engage the parents in the child's learning and development, except that such visits may take place at a program site or another safe location that affords privacy at the parent's request, or if a visit to the home presents significant safety hazards for staff; and,

(8) Teachers that serve migrant or seasonal families make every effort to conduct home visits to engage the family in the child's learning and development.

§ 1302.35 Education in home-based programs.

(a) *Purpose.* A home-based program must provide home visits and group socialization activities that promote secure parent-child relationships and help parents provide high-quality early learning experiences in language, literacy, mathematics, social and emotional functioning, approaches to learning, science, physical skills, and creative arts. A program must implement a research-based curriculum that delivers developmentally, linguistically, and culturally appropriate home visits and group socialization activities that support children's cognitive, social, and emotional growth for later success in school.

(b) *Home-based program design.* A home-based program must ensure all home visits are:

(1) Planned jointly by the home visitor and parents, and reflect the critical role of parents in the early learning and development of their children, including that the home visitor is able to effectively communicate with the parent, directly or through an interpreter;

(2) Planned using information from ongoing assessments that individualize learning experiences;

(3) Scheduled with sufficient time to serve all enrolled children in the home and conducted with parents and are not conducted when only babysitters or other temporary caregivers are present;

(4) Scheduled with sufficient time and appropriate staff to ensure effective delivery of services described in subparts D, E, F, and G of this part through home visiting, to the extent possible.

(c) *Home visit experiences.* A program that operates the home-based option must ensure all home visits focus on promoting high-quality early learning experiences in the home and growth towards the goals described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and must use such goals and the curriculum to plan home visit activities that implement:

(1) Age and developmentally appropriate, structured child-focused learning experiences;

(2) Strategies and activities that promote parents' ability to support the child's cognitive, social, emotional, language, literacy, and physical development;

(3) Strategies and activities that promote the home as a learning environment that is safe, nurturing, responsive, and language- and communication- rich;

(4) Research-based strategies and activities for children who are dual language learners that recognize bilingualism and biliteracy as strengths, and:

(i) For infants and toddlers, focus on the development of the home language, while providing experiences that expose both parents and children to English; and,

(ii) For preschoolers, focus on both English language acquisition and the continued development of the home language; and,

(5) Follow-up with the families to discuss learning experiences provided in the home between each visit, address concerns, and inform strategies to promote progress toward school readiness goals.

(d) *Home-based curriculum.* A program that operates the home-based option must:

(1) Ensure home-visiting and group socializations implement a developmentally appropriate research-based early childhood home-based curriculum that:

(i) Promotes the parent's role as the child's teacher through experiences focused on the parent-child relationship and, as appropriate, the family's traditions, culture, values, and beliefs;

(ii) Aligns with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and, as appropriate, state early learning standards, and, is sufficiently content-rich within the Framework to promote measurable progress toward goals outlined in the Framework; and,

(iii) Has an organized developmental scope and sequence that includes plans and materials for learning experiences based on developmental progressions and how children learn.

(2) Support staff in the effective implementation of the curriculum and at a minimum monitor curriculum implementation and fidelity, and provide support, feedback, and supervision for continuous improvement of its implementation through the system of training and professional development.

(3) If a program chooses to make significant adaptations to a curriculum or curriculum enhancement to better meet the needs of one or more specific populations, a program must:

(i) Partner with early childhood education curriculum or content experts; and,

(ii) Assess whether the adaptation adequately facilitates progress toward meeting school readiness goals consistent with the process described in §1302.102(b) and (c).

(4) Provide parents with an opportunity to review selected curricula and instructional materials used in the program.

(e) *Group socialization.* (1) A program that operates the home-based option must ensure group socializations are planned jointly with families, conducted with both child and parent participation, occur in a classroom, community facility, home or field trip setting, as appropriate.

(2) Group socializations must be structured to:

(i) Provide age appropriate activities for participating children that are intentionally aligned to school readiness goals, the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and the home-based curriculum; and,

(ii) Encourage parents to share experiences related to their children's development with other parents in order to strengthen parent-child relationships and to help promote parents understanding of child development;

(3) For parents with preschoolers, group socializations also must provide opportunities for parents to participate in activities that support parenting skill development or family partnership goals identified in §1302.52(c), as appropriate and must emphasize peer group interactions designed to promote children's social, emotional and language development, and progress towards school readiness goals, while encouraging parents to observe and actively participate in activities, as appropriate.

(f) *Screening and assessments.* A program that operates the home-based option must implement provisions in §1302.33 and inform parents about the purposes of and the results from screenings and assessments and discuss their child's progress.

§1302.36 Tribal language preservation and revitalization.

A program that serves American Indian and Alaska Native children may integrate efforts to preserve, revitalize, restore, or maintain the tribal language for these children into program services. Such language preservation and revitalization efforts may include full immersion in the tribal language for the majority of the hours of planned class operations. If children's home language is English, exposure to English as described in §1302.31(b)(2)(i) and (ii) is not required.

Subpart D—Health Program Services

§1302.40 Purpose.

(a) A program must provide high-quality health, oral health, mental health, and nutrition services that are developmentally, culturally, and linguistically appropriate and that will support each child's growth and school readiness.

(b) A program must establish and maintain a Health Services Advisory Committee that includes Head Start parents, professionals, and other volunteers from the community.

§1302.41 Collaboration and communication with parents.

(a) For all activities described in this part, programs must collaborate with parents as partners in the health and well-being of their children in a linguistically and culturally appropriate manner and communicate with parents about their child's health needs and development concerns in a timely and effective manner.

(b) At a minimum, a program must:

(1) Obtain advance authorization from the parent or other person with legal authority for all health and developmental procedures administered through the program or by contract or agreement, and, maintain written documentation if they refuse to give authorization for health services; and,

(2) Share with parents the policies for health emergencies that require rapid response on the part of staff or immediate medical attention.

§ 1302.42 Child health status and care.

(a) *Source of health care.* (1) A program, within 30 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, must consult with parents to determine whether each child has ongoing sources of continuous, accessible health care—provided by a health care professional that maintains the child's ongoing health record and is not primarily a source of emergency or urgent care—and health insurance coverage.

(2) If the child does not have such a source of ongoing care and health insurance coverage or access to care through the Indian Health Service, the program must assist families in accessing a source of care and health insurance that will meet these criteria, as quickly as possible.

(b) *Ensuring up-to-date child health status.* (1) Within 90 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, with the exceptions noted in paragraph (b)(3) of this section, a program must:

(i) Obtain determinations from health care and oral health care professionals as to whether or not the child is up-to-date on a schedule of age appropriate preventive and primary medical and oral health care, based on: The well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of the Medicaid agency of the state in which they operate, immunization recommendations issued by the Centers for Disease Control and Prevention, and any additional recommendations from the local Health Services Advisory Committee that are based on prevalent community health problems;

(ii) Assist parents with making arrangements to bring the child up-to-date as quickly as possible; and, if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent as described in § 1302.41(b)(1).

(2) Within 45 calendar days after the child first attends the program or, for the home-based program option, receives a home visit, a program must either obtain or perform evidence-based vision and hearing screenings.

(3) If a program operates for 90 days or less, it has 30 days from the date the child first attends the program to satisfy paragraphs (b)(1) and (2) of this section.

(4) A program must identify each child's nutritional health needs, taking into account available health information, including the child's health records, and family and staff concerns, including special dietary requirements, food allergies, and community nutrition issues as identified through the community assessment or by the Health Services Advisory Committee.

(c) *Ongoing care.* (1) A program must help parents continue to follow recommended schedules of well-child and oral health care.

(2) A program must implement periodic observations or other appropriate strategies for program staff and parents to identify any new or recurring developmental, medical, oral, or mental health concerns.

(3) A program must facilitate and monitor necessary oral health preventive care, treatment and follow-up, including topical fluoride treatments. In communities where there is a lack of adequate fluoride available through the water supply and for every child with moderate to severe tooth decay, a program must also facilitate fluoride supplements, and other necessary preventive measures, and further oral health treatment as recommended by the oral health professional.

(d) *Extended follow-up care.* (1) A program must facilitate further diagnostic testing, evaluation, treatment, and follow-up plan, as appropriate, by a licensed or certified professional for each child with a health problem or developmental delay, such as elevated lead levels or abnormal hearing or vision results that may affect child's development, learning, or behavior.

(2) A program must develop a system to track referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional, or developmental problem.

(3) A program must assist parents, as needed, in obtaining any prescribed medications, aids or equipment for medical and oral health conditions.

(e) *Use of funds.* (1) A program must use program funds for the provision of diapers and formula for enrolled children during the program day.

(2) A program may use program funds for professional medical and oral health services when no other source of funding is available. When program funds are used for such services, grantee and delegate agencies must have written documentation of their efforts to access other available sources of funding.

§ 1302.43 Oral health practices.

A program must promote effective oral health hygiene by ensuring all children with teeth are assisted by appropriate staff, or volunteers, if available, in brushing their teeth with toothpaste containing fluoride once daily.

§ 1302.44 Child nutrition.

(a) *Nutrition service requirements.* (1) A program must design and implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of and accommodate the feeding requirements of each child, including children with special dietary needs and children with

disabilities. Family style meals are encouraged as described in §1302.31(e)(2).

(2) Specifically, a program must:

(i) Ensure each child in a program that operates for fewer than six hours per day receives meals and snacks that provide one third to one half of the child's daily nutritional needs;

(ii) Ensure each child in a program that operates for six hours or more per day receives meals and snacks that provide one half to two thirds of the child's daily nutritional needs, depending upon the length of the program day;

(iii) Serve three- to five-year-olds meals and snacks that conform to USDA requirements in 7 CFR parts 210, 220, and 226, and are high in nutrients and low in fat, sugar, and salt;

(iv) Feed infants and toddlers according to their individual developmental readiness and feeding skills as recommended in USDA requirements outlined in 7 CFR parts 210, 220, and 226, and ensure infants and young toddlers are fed on demand to the extent possible;

(v) Ensure bottle-fed infants are never laid down to sleep with a bottle;

(vi) Serve all children in morning center-based settings who have not received breakfast upon arrival at the program a nourishing breakfast;

(vii) Provide appropriate healthy snacks and meals to each child during group socialization activities in the home-based option;

(viii) Promote breastfeeding, including providing facilities to properly store and handle breast milk and make accommodations, as necessary, for mothers who wish to breastfeed during program hours, and if necessary, provide referrals to lactation consultants or counselors; and,

(ix) Make safe drinking water available to children during the program day.

(b) *Payment sources.* A program must use funds from USDA Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services. Early Head Start and Head Start funds may be used to cover those allowable costs not covered by the USDA.

§1302.45 Child mental health and social and emotional well-being.

(a) *Wellness promotion.* To support a program-wide culture that promotes children's mental health, social and emotional well-being, and overall health, a program must:

(1) Provide supports for effective classroom management and positive learning environments; supportive teacher practices; and, strategies for supporting children with challenging behaviors and other social, emotional, and mental health concerns;

(2) Secure mental health consultation services on a schedule of sufficient and consistent frequency to ensure a mental health consultant is available to partner with staff and families in a timely and effective manner;

(3) Obtain parental consent for mental health consultation services at enrollment; and,

(4) Build community partnerships to facilitate access to additional mental health resources and services, as needed.

(b) *Mental health consultants.* A program must ensure mental health consultants assist:

(1) The program to implement strategies to identify and support children with mental health and social and emotional concerns;

(2) Teachers, including family child care providers, to improve classroom management and teacher practices through strategies that include using classroom observations and consultations to address teacher and individual child needs and creating physical and cultural environments that promote positive mental health and social and emotional functioning;

(3) Other staff, including home visitors, to meet children's mental health and social and emotional needs through strategies that include observation and consultation;

(4) Staff to address prevalent child mental health concerns, including internalizing problems such as appearing withdrawn and externalizing problems such as challenging behaviors; and,

(5) In helping both parents and staff to understand mental health and access mental health interventions, if needed.

(6) In the implementation of the policies to limit suspension and prohibit expulsion as described in §1302.17.

§1302.46 Family support services for health, nutrition, and mental health.

(a) *Parent collaboration.* Programs must collaborate with parents to promote children's health and well-being by providing medical, oral, nutrition and mental health education support services that are understandable to individuals, including individuals with low health literacy.

(b) *Opportunities.* (1) Such collaboration must include opportunities for parents to:

(i) Learn about preventive medical and oral health care, emergency first aid, environmental hazards, and health and safety practices for the home including health and developmental consequences of tobacco products use and exposure to lead, and safe sleep;

(ii) Discuss their child's nutritional status with staff, including the importance of physical activity, healthy eating, and the negative health consequences of sugar-sweetened beverages, and how to select and prepare nutritious foods that meet the family's nutrition and food budget needs;

(iii) Learn about healthy pregnancy and postpartum care, as appropriate, including breastfeeding support and treatment options

for parental mental health or substance abuse problems, including perinatal depression;

(iv) Discuss with staff and identify issues related to child mental health and social and emotional well-being, including observations and any concerns about their child's mental health, typical and atypical behavior and development, and how to appropriately respond to their child and promote their child's social and emotional development; and,

(v) Learn about appropriate vehicle and pedestrian safety for keeping children safe.

(2) A program must provide ongoing support to assist parents' navigation through health systems to meet the general health and specifically identified needs of their children and must assist parents:

(i) In understanding how to access health insurance for themselves and their families, including information about private and public health insurance and designated enrollment periods;

(ii) In understanding the results of diagnostic and treatment procedures as well as plans for ongoing care; and,

(iii) In familiarizing their children with services they will receive while enrolled in the program and to enroll and participate in a system of ongoing family health care.

§ 1302.47 Safety practices.

(a) A program must establish, train staff on, implement, and enforce a system of health and safety practices that ensure children are kept safe at all times. A program should consult *Caring for our Children Basics*, available at *http://www.acf.hhs.gov/sites/default/files/ecd/caring_for_our_children_basics.pdf*, for additional information to develop and implement adequate safety policies and practices described in this part.

(b) A program must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in accordance with § 1302.102, that includes policies and practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices and administrative safety procedures are adequate to ensure child safety. This system must ensure:

(1) *Facilities.* All facilities where children are served, including areas for learning, playing, sleeping, toileting, and eating are, at a minimum:

(i) Meet licensing requirements in accordance with §§ 1302.21(d)(1) and 1302.23(d);

(ii) Clean and free from pests;

(iii) Free from pollutants, hazards and toxins that are accessible to children and could endanger children's safety;

(iv) Designed to prevent child injury and free from hazards, including choking, strangulation, electrical, and drowning hazards, hazards posed by appliances and all other safety hazards;

(v) Well lit, including emergency lighting;

(vi) Equipped with safety supplies that are readily accessible to staff, including, at a minimum, fully-equipped and up-to-date first aid kits and appropriate fire safety supplies;

(vii) Free from firearms or other weapons that are accessible to children;

(viii) Designed to separate toileting and diapering areas from areas for preparing food, cooking, eating, or children's activities; and,

(ix) Kept safe through an ongoing system of preventative maintenance.

(2) *Equipment and materials.* Indoor and outdoor play equipment, cribs, cots, feeding chairs, strollers, and other equipment used in the care of enrolled children, and as applicable, other equipment and materials meet standards set by the Consumer Product Safety Commission (CPSC) or the American Society for Testing and Materials, International (ASTM). All equipment and materials must at a minimum:

(i) Be clean and safe for children's use and are appropriately disinfected;

(ii) Be accessible only to children for whom they are age appropriate;

(iii) Be designed to ensure appropriate supervision of children at all times;

(iv) Allow for the separation of infants and toddlers from preschoolers during play in center-based programs; and,

(v) Be kept safe through an ongoing system of preventative maintenance.

(3) *Background checks.* All staff have complete background checks in accordance with § 1302.90(b).

(4) *Safety training*—(i) *Staff with regular child contact.* All staff with regular child contact have initial orientation training within three months of hire and ongoing training in all state, local, tribal, federal and program-developed health, safety and child care requirements to ensure the safety of children in their care; including, at a minimum, and as appropriate based on staff roles and ages of children they work with, training in:

(A) The prevention and control of infectious diseases;

(B) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(C) Administration of medication, consistent with standards for parental consent;

(D) Prevention and response to emergencies due to food and allergic reactions;

(E) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(F) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(G) Emergency preparedness and response planning for emergencies;

(H) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(I) Appropriate precautions in transporting children, if applicable;

(J) First aid and cardiopulmonary resuscitation; and,

(K) Recognition and reporting of child abuse and neglect, in accordance with the requirement at paragraph (b)(5) of this section.

(ii) *Staff without regular child contact.* All staff with no regular responsibility for or contact with children have initial orientation training within three months of hire; ongoing training in all state, local, tribal, federal and program-developed health and safety requirements applicable to their work; and training in the program's emergency and disaster preparedness procedures.

(5) *Safety practices.* All staff and consultants follow appropriate practices to keep children safe during all activities, including, at a minimum:

(i) Reporting of suspected or known child abuse and neglect, including that staff comply with applicable federal, state, local, and tribal laws;

(ii) Safe sleep practices, including ensuring that all sleeping arrangements for children under 18 months of age use firm mattresses or cots, as appropriate, and for children under 12 months, soft bedding materials or toys must not be used;

(iii) Appropriate indoor and outdoor supervision of children at all times;

(iv) Only releasing children to an authorized adult, and;

(v) All standards of conduct described in §1302.90(c).

(6) *Hygiene practices.* All staff systematically and routinely implement hygiene practices that at a minimum ensure:

(i) Appropriate toileting, hand washing, and diapering procedures are followed;

(ii) Safe food preparation; and,

(iii) Exposure to blood and body fluids are handled consistent with standards of the Occupational Safety Health Administration.

(7) *Administrative safety procedures.* Programs establish, follow, and practice, as appropriate, procedures for, at a minimum:

(i) Emergencies;

(ii) Fire prevention and response;

(iii) Protection from contagious disease, including appropriate inclusion and exclusion policies for when a child is ill, and from an infectious disease outbreak, including appropriate notifications of any reportable illness;

(iv) The handling, storage, administration, and record of administration of medication;

(v) Maintaining procedures and systems to ensure children are only released to an authorized adult; and,

(vi) Child specific health care needs and food allergies that include accessible plans of action for emergencies. For food allergies, a program must also post individual child food allergies prominently where staff can view wherever food is served.

(8) *Disaster preparedness plan.* The program has all-hazards emergency management/disaster preparedness and response plans for more and less likely events including natural and manmade disasters and emergencies, and violence in or near programs.

(c) A program must report any safety incidents in accordance with §1302.102(d)(1)(ii).

Subpart E—Family and Community Engagement Program Services

§1302.50 Family engagement.

(a) *Purpose.* A program must integrate parent and family engagement strategies into all systems and program services to support family well-being and promote children's learning and development. Programs are encouraged to develop innovative two-generation approaches that address prevalent needs of families across their program that may leverage community partnerships or other funding sources.

(b) *Family engagement approach.* A program must:

(1) Recognize parents as their children's primary teachers and nurturers and implement intentional strategies to engage parents in their children's learning and development and support parent-child relationships, including specific strategies for father engagement;

(2) Develop relationships with parents and structure services to encourage trust and respectful, ongoing two-way communication between staff and parents to create welcoming program environments that incorporate the unique cultural, ethnic, and linguistic backgrounds of families in the program and community;

(3) Collaborate with families in a family partnership process that identifies needs, interests, strengths, goals, and services and resources that support family well-being, including family safety, health, and economic stability;

(4) Provide parents with opportunities to participate in the program as employees or volunteers;

(5) Conduct family engagement services in the family's preferred language, or through an interpreter, to the extent possible, and ensure families have the opportunity to share personal information in an environment in which they feel safe; and,

(6) Implement procedures for teachers, home visitors, and family support staff to share information with each other, as appropriate and consistent with the requirements in part 1303, subpart C, of this chapter; FERPA; or IDEA, to ensure coordinated family engagement strategies with children and families in the classroom, home, and community.

§ 1302.51 Parent activities to promote child learning and development.

(a) A program must promote shared responsibility with parents for children's early learning and development, and implement family engagement strategies that are designed to foster parental confidence and skills in promoting children's learning and development. These strategies must include:

(1) Offering activities that support parent-child relationships and child development including language, dual language, literacy, and bi-literacy development as appropriate;

(2) Providing parents with information about the importance of their child's regular attendance, and partner with them, as necessary, to promote consistent attendance; and,

(3) For dual language learners, information and resources for parents about the benefits of bilingualism and biliteracy.

(b) A program must, at a minimum, offer opportunities for parents to participate in a research-based parenting curriculum that builds on parents' knowledge and offers parents the opportunity to practice parenting skills to promote children's learning and development. A program that chooses to make significant adaptations to the parenting curriculum to better meet the needs of one or more specific populations must work with an expert or experts to develop such adaptations.

§ 1302.52 Family partnership services.

(a) *Family partnership process.* A program must implement a family partnership process that includes a family partnership agreement and the activities described in this section to support family well-being, including family safety, health, and economic stability, to support child learning and development, to provide, if applicable, services and supports for children with disabilities, and to foster parental confidence and skills that promote the early learning and development of their children. The process must be initiated as early in the program year as possible and continue for as long as the family participates in the program, based on parent interest and need.

(b) *Identification of family strengths and needs.* A program must implement intake and family assessment procedures to identify family strengths and needs related to the family engagement outcomes as described in the Head Start Parent Family and Community Engagement Framework, including family well-being, parent-child relationships, families as lifelong educators, families as learners, family engagement in transitions, family connections to peers and the local community, and families as advocates and leaders.

(c) *Individualized family partnership services.* A program must offer individualized family partnership services that:

(1) Collaborate with families to identify interests, needs, and aspirations related to the family engagement outcomes described in paragraph (b) of this section;

(2) Help families achieve identified individualized family engagement outcomes;

(3) Establish and implement a family partnership agreement process that is jointly developed and shared with parents in which staff and families review individual progress, revise goals, evaluate and track whether identified needs and goals are met, and adjust strategies on an ongoing basis, as necessary, and;

(4) Assign staff and resources based on the urgency and intensity of identified family needs and goals.

(d) *Existing plans and community resources.* In implementing this section, a program must take into consideration any existing plans for the family made with other community agencies and availability of other community resources to address family needs, strengths, and goals, in order to avoid duplication of effort.

§ 1302.53 Community partnerships and coordination with other early childhood and education programs.

(a) *Community partnerships.* (1) A program must establish ongoing collaborative relationships and partnerships with community organizations such as establishing joint agreements, procedures, or contracts and arranging for onsite delivery of services as appropriate, to facilitate access to community services that are responsive to children's and families' needs and family partnership goals, and community needs and resources, as determined by the community assessment.

(2) A program must establish necessary collaborative relationships and partnerships, with community organizations that may include:

(i) Health care providers, including child and adult mental health professionals, Medicaid managed care networks, dentists, other health professionals, nutritional service providers, providers of prenatal and postnatal support, and substance abuse treatment providers;

(ii) Individuals and agencies that provide services to children with disabilities and their families, elementary schools, state preschool providers, and providers of child care services;

(iii) Family preservation and support services and child protective services and any other agency to which child abuse must be reported under state or tribal law;

(iv) Educational and cultural institutions, such as libraries and museums, for both children and families;

(v) Temporary Assistance for Needy Families, nutrition assistance agencies, workforce development and training programs, adult or family literacy, adult education, and post-

secondary education institutions, and agencies or financial institutions that provide asset-building education, products and services to enhance family financial stability and savings;

(vi) Housing assistance agencies and providers of support for children and families experiencing homelessness, including the local educational agency liaison designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 *et seq.*);

(vii) Domestic violence prevention and support providers; and,

(viii) Other organizations or businesses that may provide support and resources to families.

(b) *Coordination with other programs and systems.* A program must take an active role in promoting coordinated systems of comprehensive early childhood services to low-income children and families in their community through communication, cooperation, and the sharing of information among agencies and their community partners, while protecting the privacy of child records in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

(1) *Memorandum of understanding.* To support coordination between Head Start and publicly funded preschool programs, a program must enter into a memorandum of understanding with the appropriate local entity responsible for managing publicly funded preschool programs in the service area of the program, as described in section 642(e)(5) of the Act.

(2) *Quality Rating and Improvement Systems.* A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if:

(i) Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system;

(ii) Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and,

(iii) The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement.

(3) *Data systems.* A program, with the exception of American Indian and Alaska Native programs unless they would like to and to the extent practicable, should integrate and share relevant data with state education data systems, to the extent practicable, if the program can receive similar support and benefits as other participating early childhood programs.

(4) *American Indian and Alaska Native programs.* An American Indian and Alaska Native program should determine whether or not it will participate in the systems described in paragraphs (b)(2) and (3) of this section.

Subpart F—Additional Services for Children With Disabilities

§ 1302.60 Full participation in program services and activities.

A program must ensure enrolled children with disabilities, including but not limited to those who are eligible for services under IDEA, and their families receive all applicable program services delivered in the least restrictive possible environment and that they fully participate in all program activities.

§ 1302.61 Additional services for children.

(a) *Additional services for children with disabilities.* Programs must ensure the individualized needs of children with disabilities, including but not limited to those eligible for services under IDEA, are being met and all children have access to and can fully participate in the full range of activities and services. Programs must provide any necessary modifications to the environment, multiple and varied formats for instruction, and individualized accommodations and supports as necessary to support the full participation of children with disabilities. Programs must ensure all individuals with disabilities are protected from discrimination under and provided with all services and program modifications required by section 504 of the Rehabilitation Act (29 U.S.C. 794), the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and their implementing regulations.

(b) *Services during IDEA eligibility determination.* While the local agency responsible for implementing IDEA determines a child's eligibility, a program must provide individualized services and supports, to the maximum extent possible, to meet the child's needs. Such additional supports may be available through a child's health insurance or it may be appropriate or required to provide the needed services and supports under section 504 of the Rehabilitation Act if the child satisfies the definition of disability in section 705(9)(b) of the Rehabilitation Act. When such supports are not available through alternate means, pending the evaluation results and eligibility determination, a program must individualize program services based on available information such as parent input and child observation and assessment data and may use program funds for these purposes.

(c) *Additional services for children with an IFSP or IEP.* To ensure the individual needs of children eligible for services under IDEA are met, a program must:

(1) Work closely with the local agency responsible for implementing IDEA, the family, and other service partners, as appropriate, to ensure:

(i) Services for a child with disabilities will be planned and delivered as required by their IFSP or IEP, as appropriate;

(ii) Children are working towards the goals in their IFSP or IEP;

(iii) Elements of the IFSP or IEP that the program cannot implement are implemented by other appropriate agencies, related service providers and specialists;

(iv) IFSPs and IEPs are being reviewed and revised, as required by IDEA; and,

(v) Services are provided in a child's regular Early Head Start or Head Start classroom or family child care home to the greatest extent possible.

(2) Plan and implement the transition services described in subpart G of this part, including at a minimum:

(i) For children with an IFSP who are transitioning out of Early Head Start, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure appropriate steps are undertaken in a timely and appropriate manner to determine the child's eligibility for services under Part B of IDEA; and,

(ii) For children with an IEP who are transitioning out of Head Start to kindergarten, collaborate with the parents, and the local agency responsible for implementing IDEA, to ensure steps are undertaken in a timely and appropriate manner to support the child and family as they transition to a new setting.

§ 1302.62 Additional services for parents.

(a) *Parents of all children with disabilities.* (1) A program must collaborate with parents of children with disabilities, including but not limited to children eligible for services under IDEA, to ensure the needs of their children are being met, including support to help parents become advocates for services that meet their children's needs and information and skills to help parents understand their child's disability and how to best support the child's development;

(2) A program must assist parents to access services and resources for their family, including securing adaptive equipment and devices and supports available through a child's health insurance or other entities, creating linkages to family support programs, and helping parents establish eligibility for additional support programs, as needed and practicable.

(b) *Parents of children eligible for services under IDEA.* For parents of children eligible for services under IDEA, a program must also help parents:

(1) Understand the referral, evaluation, and service timelines required under IDEA;

(2) Actively participate in the eligibility process and IFSP or IEP development process with the local agency responsible for implementing IDEA, including by informing parents of their right to invite the program to participate in all meetings;

(3) Understand the purposes and results of evaluations and services provided under an IFSP or IEP; and,

(4) Ensure their children's needs are accurately identified in, and addressed through, the IFSP or IEP.

§ 1302.63 Coordination and collaboration with the local agency responsible for implementing IDEA.

(a) A program must coordinate with the local agency responsible for implementing IDEA to identify children enrolled or who intend to enroll in a program that may be eligible for services under IDEA, including through the process described in §1302.33(a)(3) and through participation in the local agency Child Find efforts.

(b) A program must work to develop interagency agreements with the local agency responsible for implementing IDEA to improve service delivery to children eligible for services under IDEA, including the referral and evaluation process, service coordination, promotion of service provision in the least restrictive appropriate community-based setting and reduction in dual enrollment which causes reduced time in a less restrictive setting, and transition services as children move from services provided under Part C of IDEA to services provided under Part B of IDEA and from preschool to kindergarten.

(c) A program must participate in the development of the IFSP or IEP if requested by the child's parents, and the implementation of the IFSP or IEP. At a minimum, the program must offer:

(1) To provide relevant information from its screenings, assessments, and observations to the team developing a child's IFSP or IEP; and,

(2) To participate in meetings with the local agency responsible for implementing IDEA to develop or review an IEP or IFSP for a child being considered for Head Start enrollment, a currently enrolled child, or a child transitioning from a program.

(d) A program must retain a copy of the IEP or IFSP for any child enrolled in Head Start for the time the child is in the program, consistent with the IDEA requirements in 34 CFR parts 300 and 303.

Subpart G—Transition Services

§ 1302.70 Transitions from Early Head Start.

(a) *Implementing transition strategies and practices.* An Early Head Start program must implement strategies and practices to support successful transitions for children and

their families transitioning out of Early Head Start.

(b) *Timing for transitions.* To ensure the most appropriate placement and service following participation in Early Head Start, such programs must, at least six months prior to each child's third birthday, implement transition planning for each child and family that:

(1) Takes into account the child's developmental level and health and disability status, progress made by the child and family while in Early Head Start, current and changing family circumstances and, the availability of Head Start, other public prekindergarten, and other early education and child development services in the community that will meet the needs of the child and family; and,

(2) Transitions the child into Head Start or another program as soon as possible after the child's third birthday but permits the child to remain in Early Head Start for a limited number of additional months following the child's third birthday if necessary for an appropriate transition.

(c) *Family collaborations.* A program must collaborate with parents of Early Head Start children to implement strategies and activities that support successful transitions from Early Head Start and, at a minimum, provide information about the child's progress during the program year and provide strategies for parents to continue their involvement in and advocacy for the education and development of their child.

(d) *Early Head Start and Head Start collaboration.* Early Head Start and Head Start programs must work together to maximize enrollment transitions from Early Head Start to Head Start, consistent with the eligibility provisions in subpart A, and promote successful transitions through collaboration and communication.

(e) *Transition services for children with an IFSP.* A program must provide additional transition services for children with an IFSP, at a minimum, as described in subpart F of this part.

§ 1302.71 Transitions from Head Start to kindergarten.

(a) *Implementing transition strategies and practices.* A program that serves children who will enter kindergarten in the following year must implement transition strategies to support a successful transition to kindergarten.

(b) *Family collaborations for transitions.* (1) A program must collaborate with parents of enrolled children to implement strategies and activities that will help parents advocate for and promote successful transitions to kindergarten for their children, including their continued involvement in the education and development of their child.

(2) At a minimum, such strategies and activities must:

(i) Help parents understand their child's progress during Head Start;

(ii) Help parents understand practices they use to effectively provide academic and social support for their children during their transition to kindergarten and foster their continued involvement in the education of their child;

(iii) Prepare parents to exercise their rights and responsibilities concerning the education of their children in the elementary school setting, including services and supports available to children with disabilities and various options for their child to participate in language instruction educational programs; and,

(iv) Assist parents in the ongoing communication with teachers and other school personnel so that parents can participate in decisions related to their children's education.

(c) *Community collaborations for transitions.* (1) A program must collaborate with local education agencies to support family engagement under section 642(b)(13) of the Act and state departments of education, as appropriate, and kindergarten teachers to implement strategies and activities that promote successful transitions to kindergarten for children, their families, and the elementary school.

(2) At a minimum, such strategies and activities must include:

(i) Coordination with schools or other appropriate agencies to ensure children's relevant records are transferred to the school or next placement in which a child will enroll, consistent with privacy requirements in subpart C of part 1303 of this chapter;

(ii) Communication between appropriate staff and their counterparts in the schools to facilitate continuity of learning and development, consistent with privacy requirements in subpart C of part 1303 of this chapter; and,

(iii) Participation, as possible, for joint training and professional development activities for Head Start and kindergarten teachers and staff.

(3) A program that does not operate during the summer must collaborate with school districts to determine the availability of summer school programming for children who will be entering kindergarten and work with parents and school districts to enroll children in such programs, as appropriate.

(d) *Learning environment activities.* A program must implement strategies and activities in the learning environment that promote successful transitions to kindergarten for enrolled children, and at a minimum, include approaches that familiarize children with the transition to kindergarten and foster confidence about such transition.

(e) *Transition services for children with an IEP.* A program must provide additional transition services for children with an IEP, at a minimum, as described in subpart F of this part.

§ 1302.72 Transitions between programs.

(a) For families and children who move out of the community in which they are currently served, including homeless families and foster children, a program must undertake efforts to support effective transitions to other Early Head Start or Head Start programs. If Early Head Start or Head Start is not available, the program should assist the family to identify another early childhood program that meets their needs.

(b) A program that serves children whose families have decided to transition them to other early education programs, including public pre-kindergarten, in the year prior to kindergarten entry must undertake strategies and activities described in §1302.71(b) and (c)(1) and (2), as practicable and appropriate.

(c) A migrant or seasonal Head Start program must undertake efforts to support effective transitions to other migrant or seasonal Head Start or, if appropriate, Early Head Start or Head Start programs for families and children moving out of the community in which they are currently served.

Subpart H—Services to Enrolled Pregnant Women

§ 1302.80 Enrolled pregnant women.

(a) Within 30 days of enrollment, a program must determine whether each enrolled pregnant woman has an ongoing source of continuous, accessible health care—provided by a health care professional that maintains her ongoing health record and is not primarily a source of emergency or urgent care—and, as appropriate, health insurance coverage.

(b) If an enrolled pregnant woman does not have a source of ongoing care as described in paragraph (a) of this section and, as appropriate, health insurance coverage, a program must, as quickly as possible, facilitate her access to such a source of care that will meet her needs.

(c) A program must facilitate the ability of all enrolled pregnant women to access comprehensive services through referrals that, at a minimum, include nutritional counseling, food assistance, oral health care, mental health services, substance abuse prevention and treatment, and emergency shelter or transitional housing in cases of domestic violence.

(d) A program must provide a newborn visit with each mother and baby to offer support and identify family needs. A program must schedule the newborn visit within two weeks after the infant's birth.

§ 1302.81 Prenatal and postpartum information, education, and services.

(a) A program must provide enrolled pregnant women, fathers, and partners or other relevant family members the prenatal and postpartum information, education and services that address, as appropriate, fetal development, the importance of nutrition, the risks of alcohol, drugs, and smoking, labor and delivery, postpartum recovery, parental depression, infant care and safe sleep practices, and the benefits of breastfeeding.

(b) A program must also address needs for appropriate supports for emotional well-being, nurturing and responsive caregiving, and father engagement during pregnancy and early childhood.

§ 1302.82 Family partnership services for enrolled pregnant women.

(a) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in the family partnership services as described in §1302.52 and include a specific focus on factors that influence prenatal and postpartum maternal and infant health.

(b) A program must engage enrolled pregnant women and other relevant family members, such as fathers, in discussions about program options, plan for the infant's transition to program enrollment, and support the family during the transition process, where appropriate.

Subpart I—Human Resources Management

§ 1302.90 Personnel policies.

(a) *Establishing personnel policies and procedures.* A program must establish written personnel policies and procedures that are approved by the governing body and policy council or policy committee and that are available to all staff.

(b) *Background checks and selection procedures.* (1) Before a person is hired, directly or through contract, including transportation staff and contractors, a program must conduct an interview, verify references, conduct a sex offender registry check and obtain one of the following:

(i) State or tribal criminal history records, including fingerprint checks; or,

(ii) Federal Bureau of Investigation criminal history records, including fingerprint checks.

(2) A program has 90 days after an employee is hired to complete the background check process by obtaining:

(i) Whichever check listed in paragraph (b)(1) of this section was not obtained prior to the date of hire; and,

(ii) Child abuse and neglect state registry check, if available.

(3) A program must review the information found in each employment application and complete background check to assess the relevancy of any issue uncovered by the complete background check including any arrest, pending criminal charge, or conviction and must use Child Care and Development Fund

(CCDF) disqualification factors described in 42 U.S.C. 9858f(c)(1)(D) and 42 U.S.C. 9858f(h)(1) or tribal disqualifications factors to determine whether the prospective employee can be hired or the current employee must be terminated.

(4) A program must ensure a newly hired employee, consultant, or contractor does not have unsupervised access to children until the complete background check process described in paragraphs (b)(1) through (3) of this section is complete.

(5) A program must conduct the complete background check for each employee, consultant, or contractor at least once every five years which must include each of the four checks listed in paragraphs (b)(1) and (2) of this section, and review and make employment decisions based on the information as described in paragraph (b)(3) of this section, unless the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety.

(6) A program must consider current and former program parents for employment vacancies for which such parents apply and are qualified.

(c) *Standards of conduct.* (1) A program must ensure all staff, consultants, contractors, and volunteers abide by the program's standards of conduct that:

(i) Ensure staff, consultants, contractors, and volunteers implement positive strategies to support children's well-being and prevent and address challenging behavior;

(ii) Ensure staff, consultants, contractors, and volunteers do not maltreat or endanger the health or safety of children, including, at a minimum, that staff must not:

(A) Use corporal punishment;

(B) Use isolation to discipline a child;

(C) Bind or tie a child to restrict movement or tape a child's mouth;

(D) Use or withhold food as a punishment or reward;

(E) Use toilet learning/training methods that punish, demean, or humiliate a child;

(F) Use any form of emotional abuse, including public or private humiliation, rejecting, terrorizing, extended ignoring, or corrupting a child;

(G) Physically abuse a child;

(H) Use any form of verbal abuse, including profane, sarcastic language, threats, or derogatory remarks about the child or child's family; or,

(I) Use physical activity or outdoor time as a punishment or reward;

(iii) Ensure staff, consultants, contractors, and volunteers respect and promote the unique identity of each child and family and do not stereotype on any basis, including gender, race, ethnicity, culture, religion, disability, sexual orientation, or family composition;

(iv) Require staff, consultants, contractors, and volunteers to comply with program confidentiality policies concerning personally identifiable information about children, families, and other staff members in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws; and,

(v) Ensure no child is left alone or unsupervised by staff, consultants, contractors, or volunteers while under their care.

(2) Personnel policies and procedures must include appropriate penalties for staff, consultants, and volunteers who violate the standards of conduct.

(d) *Communication with dual language learners and their families.* (1) A program must ensure staff and program consultants or contractors are familiar with the ethnic backgrounds and heritages of families in the program and are able to serve and effectively communicate, either directly or through interpretation and translation, with children who are dual language learners and to the extent feasible, with families with limited English proficiency.

(2) If a majority of children in a class or home-based program speak the same language, at least one class staff member or home visitor must speak such language.

§ 1302.91 Staff qualifications and competency requirements.

(a) *Purpose.* A program must ensure all staff, consultants, and contractors engaged in the delivery of program services have sufficient knowledge, training and experience, and competencies to fulfill the roles and responsibilities of their positions and to ensure high-quality service delivery in accordance with the program performance standards. A program must provide ongoing training and professional development to support staff in fulfilling their roles and responsibilities.

(b) *Early Head Start or Head Start director.* A program must ensure an Early Head Start or Head Start director hired after November 7, 2016, has, at a minimum, a baccalaureate degree and experience in supervision of staff, fiscal management, and administration.

(c) *Fiscal officer.* A program must assess staffing needs in consideration of the fiscal complexity of the organization and applicable financial management requirements and secure the regularly scheduled or ongoing services of a fiscal officer with sufficient education and experience to meet their needs. A program must ensure a fiscal officer hired after November 7, 2016, is a certified public accountant or has, at a minimum, a baccalaureate degree in accounting, business, fiscal management, or a related field.

(d) *Child and family services management staff qualification requirements*—(1) *Family, health, and disabilities management.* A program must ensure staff responsible for management and oversight of family services,

health services, and services to children with disabilities hired after November 7, 2016, have, at a minimum, a baccalaureate degree, preferably related to one or more of the disciplines they oversee.

(2) *Education management.* As prescribed in section 648A(a)(2)(B)(i) of the Act, a program must ensure staff and consultants that serve as education managers or coordinators, including those that serve as curriculum specialists, have a baccalaureate or advanced degree in early childhood education or a baccalaureate or advanced degree and equivalent coursework in early childhood education with early education teaching experience.

(e) *Child and family services staff*—(1) *Early Head Start center-based teacher qualification requirements.* As prescribed in section 645A(h) of the Act, a program must ensure center-based teachers that provide direct services to infants and toddlers in Early Head Start centers have a minimum of a Child Development Associate (CDA) credential or comparable credential, and have been trained or have equivalent coursework in early childhood development with a focus on infant and toddler development.

(2) *Head Start center-based teacher qualification requirements.* (i) The Secretary must ensure no less than fifty percent of all Head Start teachers, nationwide, have a baccalaureate degree in child development, early childhood education, or equivalent coursework.

(ii) As prescribed in section 648A(a)(3)(B) of the Act, a program must ensure all center-based teachers have at least an associate's or bachelor's degree in child development or early childhood education, equivalent coursework, or otherwise meet the requirements of section 648A(a)(3)(B) of the Act.

(3) *Head Start assistant teacher qualification requirements.* As prescribed in section 648A(a)(2)(B)(ii) of the Act, a program must ensure Head Start assistant teachers, at a minimum, have a CDA credential or a state-awarded certificate that meets or exceeds the requirements for a CDA credential, are enrolled in a program that will lead to an associate or baccalaureate degree or, are enrolled in a CDA credential program to be completed within two years of the time of hire.

(4) *Family child care provider qualification requirements.* (i) A program must ensure family child care providers have previous early child care experience and, at a minimum, are enrolled in a Family Child Care CDA program or state equivalent, or an associate's or baccalaureate degree program in child development or early childhood education prior to beginning service provision, and for the credential acquire it within eighteen months of beginning to provide services.

(ii) By August 1, 2018, a child development specialist, as required for family child care in §1302.23(e), must have, at a minimum, a baccalaureate degree in child development, early childhood education, or a related field.

(5) *Center-based teachers, assistant teachers, and family child care provider competencies.* A program must ensure center-based teachers, assistant teachers, and family child care providers demonstrate competency to provide effective and nurturing teacher-child interactions, plan and implement learning experiences that ensure effective curriculum implementation and use of assessment and promote children's progress across the standards described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five* and applicable state early learning and development standards, including for children with disabilities and dual language learners, as appropriate.

(6) *Home visitors.* A program must ensure home visitors providing home-based education services:

(i) Have a minimum of a home-based CDA credential or comparable credential, or equivalent coursework as part of an associate's or bachelor's degree; and,

(ii) Demonstrate competency to plan and implement home-based learning experiences that ensure effective implementation of the home visiting curriculum and promote children's progress across the standards described in the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, including for children with disabilities and dual language learners, as appropriate, and to build respectful, culturally responsive, and trusting relationships with families.

(7) *Family services staff qualification requirements.* A program must ensure staff who work directly with families on the family partnership process hired after November 7, 2016, have within eighteen months of hire, at a minimum, a credential or certification in social work, human services, family services, counseling or a related field.

(8) *Health professional qualification requirements.* (i) A program must ensure health procedures are performed only by a licensed or certified health professional.

(ii) A program must ensure all mental health consultants are licensed or certified mental health professionals. A program must use mental health consultants with knowledge of and experience in serving young children and their families, if available in the community.

(iii) A program must use staff or consultants to support nutrition services who are registered dieticians or nutritionists with appropriate qualifications.

(f) *Coaches.* A program must ensure coaches providing the services described in §1302.92(c) have a minimum of a baccalaureate degree in early childhood education or a related field.

§ 1302.92 Training and professional development.

(a) A program must provide to all new staff, consultants, and volunteers an orientation that focuses on, at a minimum, the goals and underlying philosophy of the program and on the ways they are implemented.

(b) A program must establish and implement a systematic approach to staff training and professional development designed to assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their job responsibilities, and attached to academic credit as appropriate. At a minimum, the system must include:

(1) Staff completing a minimum of 15 clock hours of professional development per year. For teaching staff, such professional development must meet the requirements described in section 648A(a)(5) of the Act.

(2) Training on methods to handle suspected or known child abuse and neglect cases, that comply with applicable federal, state, local, and tribal laws;

(3) Training for child and family services staff on best practices for implementing family engagement strategies in a systemic way, as described throughout this part;

(4) Training for child and family services staff, including staff that work on family services, health, and disabilities, that builds their knowledge, experience, and competencies to improve child and family outcomes; and,

(5) Research-based approaches to professional development for education staff, that are focused on effective curricula implementation, knowledge of the content in *Head Start Early Learning Outcomes Framework: Ages Birth to Five*, partnering with families, supporting children with disabilities and their families, providing effective and nurturing adult-child interactions, supporting dual language learners as appropriate, addressing challenging behaviors, preparing children and families for transitions (as described in subpart G of this part), and use of data to individualize learning experiences to improve outcomes for all children.

(c) A program must implement a research-based, coordinated coaching strategy for education staff that:

(1) Assesses all education staff to identify strengths, areas of needed support, and which staff would benefit most from intensive coaching;

(2) At a minimum, provides opportunities for intensive coaching to those education staff identified through the process in paragraph (c)(1) of this section, including opportunities to be observed and receive feedback and modeling of effective teacher practices directly related to program performance goals;

(3) At a minimum, provides opportunities for education staff not identified for intensive coaching through the process in paragraph (c)(1) of this section to receive other forms of research-based professional development aligned with program performance goals;

(4) Ensures intensive coaching opportunities for the staff identified through the process in paragraph (c)(1) of this section that:

(i) Align with the program's school readiness goals, curricula, and other approaches to professional development;

(ii) Utilize a coach with adequate training and experience in adult learning and in using assessment data to drive coaching strategies aligned with program performance goals;

(iii) Provide ongoing communication between the coach, program director, education director, and any other relevant staff; and,

(iv) Include clearly articulated goals informed by the program's goals, as described in § 1302.102, and a process for achieving those goals; and,

(5) Establishes policies that ensure assessment results are not used to solely determine punitive actions for staff identified as needing support, without providing time and resources for staff to improve.

(d) If a program needs to develop or significantly adapt their approach to research-based professional development to better meet the training needs of education staff, such that it does not include the requirements in paragraph (c) of this section, the program must partner with external early childhood education professional development experts. A program must assess whether the adaptation adequately supports staff professional development, consistent with the process laid out in subpart J of this part.

§ 1302.93 Staff health and wellness.

(a) A program must ensure each staff member has an initial health examination and a periodic re-examination as recommended by their health care provider in accordance with state, tribal, or local requirements, that include screeners or tests for communicable diseases, as appropriate. The program must ensure staff do not, because of communicable diseases, pose a significant risk to the health or safety of others in the program that cannot be eliminated or reduced by reasonable accommodation, in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(b) A program must make mental health and wellness information available to staff regarding health issues that may affect their job performance, and must provide regularly scheduled opportunities to learn about mental health, wellness, and health education.

§ 1302.94 Volunteers.

(a) A program must ensure regular volunteers have been screened for appropriate communicable diseases in accordance with

state, tribal or local laws. In the absence of state, tribal or local law, the Health Services Advisory Committee must be consulted regarding the need for such screenings.

(b) A program must ensure children are never left alone with volunteers.

Subpart J—Program Management and Quality Improvement

§ 1302.100 Purpose.

A program must provide management and a process of ongoing monitoring and continuous improvement for achieving program goals that ensures child safety and the delivery of effective, high-quality program services.

§ 1302.101 Management system.

(a) *Implementation.* A program must implement a management system that:

(1) Ensures a program, fiscal, and human resource management structure that provides effective management and oversight of all program areas and fiduciary responsibilities to enable delivery of high-quality services in all of the program services described in subparts C, D, E, F, G, and H of this part;

(2) Provides regular and ongoing supervision to support individual staff professional development and continuous program quality improvement;

(3) Ensures budget and staffing patterns that promote continuity of care for all children enrolled, allow sufficient time for staff to participate in appropriate training and professional development, and allow for provision of the full range of services described in subparts C, D, E, F, G, and H of this part; and,

(4) Maintains an automated accounting and record keeping system adequate for effective oversight.

(b) *Coordinated approaches.* At the beginning of each program year, and on an ongoing basis throughout the year, a program must design and implement program-wide coordinated approaches that ensure:

(1) The training and professional development system, as described in § 1302.92, effectively supports the delivery and continuous improvement of high-quality services;

(2) The full and effective participation of children who are dual language learners and their families, by:

(i) Utilizing information from the program's community assessment about the languages spoken throughout the program service area to anticipate child and family needs;

(ii) Identifying community resources and establishing ongoing collaborative relationships and partnerships with community organizations consistent with the requirements in § 1302.53(a); and,

(iii) Systematically and comprehensively addressing child and family needs by facilitating meaningful access to program services, including, at a minimum, curriculum, instruction, staffing, supervision, and family partnerships with bilingual staff, oral language assistance and interpretation, or translation of essential program materials, as appropriate.

(3) The full and effective participation of all children with disabilities, including but not limited to children eligible for services under IDEA, by providing services with appropriate facilities, program materials, curriculum, instruction, staffing, supervision, and partnerships, at a minimum, consistent with section 504 of the Rehabilitation Act and the Americans with Disabilities Act; and,

(4) The management of program data to effectively support the availability, usability, integrity, and security of data. A program must establish procedures on data management, and have them approved by the governing body and policy council, in areas such as quality of data and effective use and sharing of data, while protecting the privacy of child records in accordance with subpart C of part 1303 of this chapter and applicable federal, state, local, and tribal laws.

§ 1302.102 Achieving program goals.

(a) *Establishing program goals.* A program, in collaboration with the governing body and policy council, must establish goals and measurable objectives that include:

(1) Strategic long-term goals for ensuring programs are and remain responsive to community needs as identified in their community assessment as described in subpart A of this part;

(2) Goals for the provision of educational, health, nutritional, and family and community engagement program services as described in the program performance standards to further promote the school readiness of enrolled children;

(3) School readiness goals that are aligned with the *Head Start Early Learning Outcomes Framework: Ages Birth to Five,* state and tribal early learning standards, as appropriate, and requirements and expectations of schools Head Start children will attend, per the requirements of subpart B of part 1304 of this part; and,

(4) Effective health and safety practices to ensure children are safe at all times, per the requirements in §§ 1302.47, 1302.90(b) and (c), 1302.92(c)(1), and 1302.94 and part 1303, subpart F, of this chapter.

(b) *Monitoring program performance*—(1) *Ongoing compliance oversight and correction.* In order to ensure effective ongoing oversight and correction, a program must establish and implement a system of ongoing oversight that ensures effective implementation

of the program performance standards, including ensuring child safety, and other applicable federal regulations as described in this part, and must:

(i) Collect and use data to inform this process;

(ii) Correct quality and compliance issues immediately, or as quickly as possible;

(iii) Work with the governing body and the policy council to address issues during the ongoing oversight and correction process and during federal oversight; and,

(iv) Implement procedures that prevent recurrence of previous quality and compliance issues, including previously identified deficiencies, safety incidents, and audit findings.

(2) *Ongoing assessment of program goals.* A program must effectively oversee progress towards program goals on an ongoing basis and annually must:

(i) Conduct a self-assessment that uses program data including aggregated child assessment data, and professional development and parent and family engagement data as appropriate, to evaluate the program's progress towards meeting goals established under paragraph (a) of this section, compliance with program performance standards throughout the program year, and the effectiveness of the professional development and family engagement systems in promoting school readiness;

(ii) Communicate and collaborate with the governing body and policy council, program staff, and parents of enrolled children when conducting the annual self-assessment; and,

(iii) Submit findings of the self-assessment, including information listed in paragraph (b)(2)(i) of this section to the responsible HHS official.

(c) *Using data for continuous improvement.* (1) A program must implement a process for using data to identify program strengths and needs, develop and implement plans that address program needs, and continually evaluate compliance with program performance standards and progress towards achieving program goals described in paragraph (a) of this section.

(2) This process must:

(i) Ensure data is aggregated, analyzed and compared in such a way to assist agencies in identifying risks and informing strategies for continuous improvement in all program service areas;

(ii) Ensure child-level assessment data is aggregated and analyzed at least three times a year, including for sub-groups, such as dual language learners and children with disabilities, as appropriate, except in programs operating fewer than 90 days, and used with other program data described in paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services; and,

(iii) For programs operating fewer than 90 days, ensures child assessment data is aggregated and analyzed at least twice during the program operating period, including for subgroups, such as dual language learners and children with disabilities, as appropriate, and used with other program data described in paragraph (c)(2)(iv) of this section to direct continuous improvement related to curriculum choice and implementation, teaching practices, professional development, program design and other program decisions, including changing or targeting scope of services;

(iv) Use information from ongoing monitoring and the annual self-assessment, and program data on teaching practice, staffing and professional development, child-level assessments, family needs assessments, and comprehensive services, to identify program needs, and develop and implement plans for program improvement; and,

(v) Use program improvement plans as needed to either strengthen or adjust content and strategies for professional development, change program scope and services, refine school readiness and other program goals, and adapt strategies to better address the needs of sub-groups.

(d) *Reporting.* (1) A program must submit:

(i) Status reports, determined by ongoing oversight data, to the governing body and policy council, at least semi-annually;

(ii) Reports, as appropriate, to the responsible HHS official immediately or as soon as practicable, related to any significant incidents affecting the health and safety of program participants, circumstances affecting the financial viability of the program, breaches of personally identifiable information, or program involvement in legal proceedings, any matter for which notification or a report to state, tribal, or local authorities is required by applicable law, including at a minimum:

(A) Any reports regarding agency staff or volunteer compliance with federal, state, tribal, or local laws addressing child abuse and neglect or laws governing sex offenders;

(B) Incidents that require classrooms or centers to be closed for any reason;

(C) Legal proceedings by any party that are directly related to program operations; and,

(D) All conditions required to be reported under §1304.12, including disqualification from the Child and Adult Care Food Program (CACFP) and license revocation.

(2) Annually, a program must publish and disseminate a report that complies with section 644(a)(2) of the Act and includes a summary of a program's most recent community assessment, as described in §1302.11(b), consistent with privacy protections in subpart C of part 1303 of this chapter.

(3) If a program has had a deficiency identified, it must submit, to the responsible HHS official, a quality improvement plan as required in section 641A(e)(2) of the Act.

§ 1302.103 Implementation of program performance standards.

(a) A current program as of November 7, 2016, must implement a program-wide approach for the effective and timely implementation of the changes to the program performance standards, including the purchase of materials and allocation of staff time, as appropriate.

(b) A program's approach to implement the changes included in parts 1301 through 1304 of this chapter must ensure adequate preparation for effective and timely service delivery to children and their families including, at a minimum, review of community assessment data to determine the most appropriate strategy for implementing required program changes, including assessing any changes in the number of children who can be served, as necessary, the purchase of and training on any curriculum, assessment, or other materials, as needed, assessment of program-wide professional development needs, assessment of staffing patterns, the development of coordinated approaches described in §1302.101(b), and the development of appropriate protections for data sharing; and children enrolled in the program on November 7, 2016 are not displaced during a program year and that children leaving Early Head Start or Head Start at the end of the program year following November 7, 2016 as a result of any slot reductions received services described in §§1302.70 and 1302.72 to facilitate successful transitions to other programs.

PART 1303—FINANCIAL AND ADMINISTRATIVE REQUIREMENTS

Sec.

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AUTHORITY: 42 U.S.C. 9801 *et seq.*

§ 1303.1 Overview.

Section 641A of the Act requires that the Secretary modify as necessary program performance standards including administrative and financial management standards (section 641A(a)(1)(C)). This part specifies the financial and administrative requirements of agencies. Subpart A of this part outlines the financial requirements consistent with sections 640(b) and 644(b) and (c) of the Act. Subpart B of this part specifies the administrative requirements consistent with sections 644(a)(1), 644(e), 653, 654, 655, 656, and 657A of

the Act. Subpart C of this part implements the statutory provision at section 641A(b)(4) of the Act that directs the Secretary to ensure the confidentiality of any personally identifiable data, information, and records collected or maintained. Subpart D of this part prescribes regulations for the operation of delegate agencies consistent with Section 641(A)(d). Subpart E of this part implements the statutory requirements in Section 644(c), (f) and (g) related to facilities. Subpart F prescribes regulations on transportation consistent with section 640(i) of the Act.

Subpart A—Financial Requirements

§ 1303.2 Purpose.

This subpart establishes regulations applicable to program administration and grants management for all grants under the Act.

§ 1303.3 Other requirements.

The following chart includes HHS regulations that apply to all grants made under the Act:

Cite	Title
45 CFR part 16	Department grant appeals process.
45 CFR part 30	HHS Standards and Procedures for Claims collection.
45 CFR part 46	Protection of human subjects.
45 CFR part 75	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
45 CFR part 80	Nondiscrimination under programs receiving federal assistance through the Department of Health and Human Services—Effectuation of title VI and VII of the Civil Rights Act of 1964.
45 CFR part 81	Practice and procedure for hearings under part 80.
45 CFR part 84	Nondiscrimination on the basis of handicap in federally assisted programs.
45 CFR part 87	Equal treatment for faith based organizations.
2 CFR part 170	FFATA Sub-award and executive compensation.
2 CFR 25.110	CCR/DUNS requirement.

§ 1303.4 Federal financial assistance, non-federal match, and waiver requirements.

In accordance with section 640(b) of the Act, federal financial assistance to a grantee will not exceed 80 percent of the approved total program costs. A grantee must contribute 20 percent as non-federal match each budget period. The responsible HHS official may approve a waiver of all or a portion of the non-federal match requirement on the basis of the grantee's written application submitted for the budget period and any supporting evidence the responsible HHS official requires. In deciding whether to grant a waiver, the responsible HHS official will consider the circumstances specified at section 640(b) of the Act and whether the grantee has made a reasonable effort to comply with the non-federal match requirement.

§ 1303.5 Limitations on development and administrative costs.

(a) *Limitations.* (1) Costs to develop and administer a program cannot be excessive or exceed 15 percent of the total approved program costs. Allowable costs to develop and administer a Head Start program cannot exceed 15 percent of the total approved program costs, which includes both federal costs and non-federal match, unless the responsible HHS official grants a waiver under paragraph (b) of this section that approves a higher percentage in order to carry out the purposes of the Act.

(2) To assess total program costs and determine whether a grantee meets this requirement, the grantee must:

(i) Determine the costs to develop and administer its program, including the local costs of necessary resources;

(ii) Categorize total costs as development and administrative or program costs;

(iii) Identify and allocate the portion of dual benefits costs that are for development and administration;

(iv) Identify and allocate the portion of indirect costs that are for development and administration versus program costs; and,

(v) Delineate all development and administrative costs in the grant application and calculate the percentage of total approved costs allocated to development and administration.

(b) *Waivers.* (1) The responsible HHS official may grant a waiver for each budget period if a delay or disruption to program services is caused by circumstances beyond the agency's control, or if an agency is unable to administer the program within the 15 percent limitation and if the agency can demonstrate efforts to reduce its development and administrative costs.

(2) If at any time within the grant funding cycle, a grantee estimates development and administration costs will exceed 15 percent of total approved costs, it must submit a waiver request to the responsible HHS official that explains why costs exceed the limit, that indicates the time period the waiver will cover, and that describes what the grantee will do to reduce its development and administrative costs to comply with the 15 percent limit after the waiver period.

Subpart B—Administrative Requirements

§ 1303.10 Purpose.

A grantee must observe standards of organization, management, and administration that will ensure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of the Act and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism.

§ 1303.11 Limitations and prohibitions.

An agency must adhere to sections 644(e), 644(g)(3), 653, 654, 655, 656, and 657A of the Act. These sections pertain to union organizing, the Davis-Bacon Act, limitations on compensation, nondiscrimination, unlawful activities, political activities, and obtaining parental consent.

§ 1303.12 Insurance and bonding.

An agency must have an ongoing process to identify risks and have cost-effective insurance for those identified risks; a grantee must require the same for its delegates. The agency must specifically consider the risk of accidental injury to children while participating in the program. The grantee must submit proof of appropriate coverage in its initial application for funding. The process of identifying risks must also consider the risk of losses resulting from fraudulent acts by individuals authorized to disburse Head Start funds. Consistent with 45 CFR part 75, if the agency lacks sufficient coverage to protect the federal government's interest, the agency must maintain adequate fidelity bond coverage.

Subpart C—Protections for the Privacy of Child Records

§ 1303.20 Establishing procedures.

A program must establish procedures to protect the confidentiality of any personally identifiable information (PII) in child records.

§ 1303.21 Program procedures—applicable confidentiality provisions.

(a) If a program is an educational agency or institution that receives funds under a program administered by the Department of Education and therefore is subject to the confidentiality provisions under the Family Educational Rights and Privacy Act (FERPA), then it must comply with those confidentiality provisions of FERPA instead of the provisions in this subpart.

(b) If a program serves a child who is referred to, or found eligible for services under, IDEA, then a program must comply with the applicable confidentiality provisions in Part B or Part C of IDEA to protect the PII in records of those children, and, therefore, the provisions in this subpart do not apply to those children.

§ 1303.22 Disclosures with, and without, parental consent.

(a) *Disclosure with parental consent.* (1) Subject to the exceptions in paragraphs (b) and (c) of this section, the procedures to protect PII must require the program to obtain a parent's written consent before the program may disclose such PII from child records.

(2) The procedures to protect PII must require the program to ensure the parent's written consent specifies what child records may be disclosed, explains why the records will be disclosed, and identifies the party or class of parties to whom the records may be disclosed. The written consent must be signed and dated.

(3) ''Signed and dated written consent'' under this part may include a record and signature in electronic form that:

(i) Identifies and authenticates a particular person as the source of the electronic consent; and,

(ii) Indicates such person's approval of the information.

(4) The program must explain to the parent that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive and therefore it does not apply to an action that occurred before the consent was revoked.

(b) *Disclosure without parental consent but with parental notice and opportunity to refuse.* The procedures to protect PII must allow the program to disclose such PII from child records without parental consent if the program notifies the parent about the disclosure, provides the parent, upon the parent's request, a copy of the PII from child records to be disclosed in advance, and gives the parent an opportunity to challenge and refuse disclosure of the information in the records, before the program forwards the records to officials at a program, school, or school district in which the child seeks or intends to enroll or where the child is already enrolled so long as the disclosure is related to the child's enrollment or transfer.

(c) *Disclosure without parental consent.* The procedures to protect PII must allow the program to disclose such PII from child records without parental consent to:

(1) Officials within the program or acting for the program, such as contractors and subrecipients, if the official provides services for which the program would otherwise use employees, the program determines it is necessary for Head Start services, and the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement;

(2) Officials within the program, acting for the program, or from a federal or state entity, in connection with an audit or evaluation of education or child development programs, or for enforcement of or compliance with federal legal requirements of the program; provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure, except when the disclosure is specifically authorized by federal law or by the responsible HHS official;

(3) Officials within the program, acting for the program, or from a federal or state entity, to conduct a study to improve child and family outcomes, including improving the quality of programs, for, or on behalf of, the program, provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure;

(4) Appropriate parties in order to address a disaster, health or safety emergency during the period of the emergency, or a serious health and safety risk such as a serious food allergy, if the program determines that disclosing the PII from child records is necessary to protect the health or safety of children or other persons;

(5) Comply with a judicial order or lawfully issued subpoena, provided the program makes a reasonable effort to notify the parent about all such subpoenas and court orders in advance of the compliance therewith, unless:

(i) A court has ordered that neither the subpoena, its contents, nor the information provided in response be disclosed;

(ii) The disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(iii) A parent is a party to a court proceeding directly involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the program is not required; or,

(iv) A program initiates legal action against a parent or a parent initiates legal action against a program, then a program may disclose to the court, also without a court order or subpoena, the child records relevant for the program to act as plaintiff or defendant.

(6) The Secretary of Agriculture or an authorized representative from the Food and Nutrition Service to conduct program monitoring, evaluations, and performance measurements for the Child and Adult Care Food Program under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, if the results will be reported in an aggregate form that does not identify any individual: Provided, that any data collected must be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary of Agriculture and any PII must be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements;

(7) A caseworker or other representative from a state, local, or tribal child welfare agency, who has the right to access a case plan for a child who is in foster care placement, when such agency is legally responsible for the child's care and protection, under state or tribal law, if the agency agrees in writing to protect PII, to use information from the child's case plan for specific purposes intended of addressing the child's needs, and to destroy information that is no longer needed for those purposes; and,

(8) Appropriate parties in order to address suspected or known child maltreatment and is consistent with applicable federal, state, local, and tribal laws on reporting child abuse and neglect.

(d) *Written agreements.* When a program establishes a written agreement with a third party, the procedures to protect such PII must require the program to annually review and, if necessary, update the agreement. If the third party violates the agreement, then the program may:

(1) Provide the third party an opportunity to self-correct; or,

(2) Prohibit the third party from access to records for a set period of time as established by the programs governing body and policy council.

(e) *Annual notice.* The procedures to protect PII must require the program to annually notify parents of their rights in writing described in this subpart and applicable definitions in part 1305 of this chapter, and include in that notice a description of the types of PII that may be disclosed, to whom the PII may be disclosed, and what may constitute a necessary reason for the disclosure without parental consent as described in paragraph (c) of this section.

(f) *Limit on disclosing PII.* A program must only disclose the information that is deemed necessary for the purpose of the disclosure.

§ 1303.23 Parental rights.

(a) *Inspect record.* (1) A parent has the right to inspect child records.

(2) If the parent requests to inspect child records, the program must make the child records available within a reasonable time, but no more than 45 days after receipt of request.

(3) If a program maintains child records that contain information on more than one child, the program must ensure the parent only inspects information that pertains to the parent's child.

(4) The program shall not destroy a child record with an outstanding request to inspect and review the record under this section.

(b) *Amend record.* (1) A parent has the right to ask the program to amend information in the child record that the parent believes is inaccurate, misleading, or violates the child's privacy.

(2) The program must consider the parent's request and, if the request is denied, render a written decision to the parent within a reasonable time that informs the parent of the right to a hearing.

(c) *Hearing.* (1) If the parent requests a hearing to challenge information in the child record, the program must schedule a hearing within a reasonable time, notify the parent, in advance, about the hearing, and ensure the person who conducts the hearing does not have a direct interest in its outcome.

(2) The program must ensure the hearing affords the parent a full and fair opportunity to present evidence relevant to the issues.

(3) If the program determines from evidence presented at the hearing that the information in the child records is inaccurate, misleading, or violates the child's privacy, the program must either amend or remove the information and notify the parent in writing.

(4) If the program determines from evidence presented at the hearing that information in the child records is accurate, does not mislead, or otherwise does not violate the child's privacy, the program must inform the parent of the right to place a statement in the child records that either comments on the contested information or that states why the parent disagrees with the program's decision, or both.

(d) *Right to copy of record.* The program must provide a parent, free of charge, an initial copy of child records disclosed to third parties with parental consent and, upon parent request, an initial copy of child records disclosed to third parties, unless the disclosure was for a court that ordered neither the subpoena, its contents, nor the information furnished in response be disclosed.

(e) *Right to inspect written agreements.* A parent has the right to review any written agreements with third parties.

§ 1303.24 Maintaining records.

(a) A program must maintain child records in a manner that ensures only parents, and officials within the program or acting on behalf of the program have access, and such records must be destroyed within a reasonable timeframe after such records are no longer needed or required to be maintained.

(b) A program must maintain, with the child records, for as long as the records are maintained, information on all individuals, agencies, or organizations to whom a disclosure of PII from the child records was made (except for program officials and parents) and why the disclosure was made. If a program uses a web-based data system to maintain child records, the program must ensure such child records are adequately protected and maintained according to current industry security standards.

(c) If a parent places a statement in the child record, the program must maintain the statement with the contested part of the child record for as long as the program maintains the record and, disclose the statement whenever it discloses the portion of the child record to which the statement relates.

Subpart D—Delegation of Program Operations

§ 1303.30 Grantee responsibility and accountability.

A grantee is accountable for the services its delegate agencies provide. The grantee supports, oversees and ensures delegate agencies provide high-quality services to children and families and meet all applicable Head Start requirements. The grantee can only terminate a delegate agency if the grantee shows cause why termination is necessary and provides a process for delegate agencies to appeal termination decisions. The grantee retains legal responsibility and authority and bears financial accountability for the program when services are provided by delegate agencies.

§ 1303.31 Determining and establishing delegate agencies.

(a) If a grantee enters into an agreement with another entity to serve children, the grantee must determine whether the agreement meets the definition of ''delegate agency'' in section 637(3) of the Act.

(b) A grantee must not award a delegate agency federal financial assistance unless there is a written agreement and the responsible HHS official approves the agreement before the grantee delegates program operations.

§ 1303.32 Evaluations and corrective actions for delegate agencies.

A grantee must evaluate and ensure corrective action for delegate agencies according to section 641A(d) of the Act.

§ 1303.33 Termination of delegate agencies.

(a) If a grantee shows cause why termination is appropriate or demonstrates cost effectiveness, the grantee may terminate a delegate agency's contract.

(b) The grantee's decision to terminate must not be arbitrary or capricious.

(c) The grantee must establish a process for defunding a delegate agency, including an appeal of a defunding decision and must ensure the process is fair and timely.

(d) The grantee must notify the responsible HHS official about the appeal and its decision.

Subpart E—Facilities

§ 1303.40 Purpose.

This subpart prescribes what a grantee must establish to show it is eligible to purchase, construct and renovate facilities as outlined in section 644(c), (f) and (g) of the Act. It explains how a grantee may apply for funds, details what measures a grantee must take to protect federal interest in facilities purchased, constructed or renovated with grant funds, and concludes with other administrative provisions. This subpart applies to major renovations. It only applies to minor renovations and repairs, when they are included with a purchase application and are part of purchase costs.

§ 1303.41 Approval of previously purchased facilities.

If a grantee purchased a facility after December 31, 1986, and seeks to use grant funds to continue to pay purchase costs for the facility or to refinance current indebtedness and use grant funds to service the resulting debt, the grantee may apply for funds to meet those costs. The grantee must submit an application that conforms to requirements in this part and in the Act to the responsible HHS official. If the responsible HHS official approves the grantee's application, Head Start funds may be used to pay ongoing purchase costs, which include principal and interest on approved loans.

§ 1303.42 Eligibility to purchase, construct, and renovate facilities.

(a) *Preliminary eligibility*. (1) Before a grantee can apply for funds to purchase, construct, or renovate a facility under § 1303.44, it must establish that:

(i) The facility will be available to Indian tribes, or rural or other low-income communities;

(ii) The proposed purchase, construction or major renovation is within the grantee's designated service area; and,

(iii) The proposed purchase, construction or major renovation is necessary because the lack of suitable facilities in the grantee's service area will inhibit the operation of the program.

(2) If a program applies to construct a facility, that the construction of such facility is more cost-effective than the purchase of available facilities or renovation.

(b) *Proving a lack of suitable facilities*. To satisfy paragraph (a)(1)(iii) of this section, the grantee must have a written statement from an independent real estate professional familiar with the commercial real estate market in the grantee's service area, that includes factors considered and supports how the real estate professional determined there are no other suitable facilities in the area.

§ 1303.43 Use of grant funds to pay fees.

A grantee may submit a written request to the responsible HHS official for reasonable fees and costs necessary to determine preliminary eligibility under § 1303.42 before it submits an application under § 1303.44. If the responsible HHS official approves the grantee's application, the grantee may use federal funds to pay fees and costs.

§ 1303.44 Applications to purchase, construct, and renovate facilities.

(a) *Application requirements*. If a grantee is preliminarily eligible under § 1303.42 to apply for funds to purchase, construct, or renovate a facility, it must submit to the responsible HHS official:

(1) A statement that explains the anticipated effect the proposed purchase, construction or renovation has had or will have on program enrollment, activities and services, and how it determined what the anticipated effect would be;

(2) A deed or other document showing legal ownership of the real property where facilities activity is proposed, legal description of the facility site, and an explanation why the location is appropriate for the grantee's service area;

(3) Plans and specifications for the facility, including square footage, structure type, the number of rooms the facility will have or has, how the rooms will be used, where the structure will be positioned or located on the building site, and whether there is space available for outdoor play and for parking;

(4) Certification by a licensed engineer or architect that the facility is, or will be upon completion, structurally sound and safe for use as a Head Start facility and that the facility complies, or will comply upon completion, with local building codes, applicable child care licensing requirements, the accessibility requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, the Flood Disaster Protection Act of 1973, and the National Historic Preservation Act of 1966;

(5) A description of proposed renovations or repairs to make the facility suitable for program activities, and plans and specification that describe the facility after renovation or repair;

(6) A proposed schedule that details when the grantee will acquire, renovate, repair and occupy the facility;

(7) An estimate by a licensed independent certified appraiser of the facility's fair market value after proposed purchase and associated repairs and renovations construction, or major renovation is completed is required for all facilities activities except for major renovations to leased property;

(8) The cost comparison described in §1303.45;

(9) A statement that shows what share of the purchase, construction, or major renovation will be paid with grant funds and what the grantee proposes to contribute as a non-federal match to the purchase, construction or major renovation;

(10) A statement from a lender, if a grantee applies to use Head Start funds to continue purchase on a facility or refinance existing debt on a facility that indicates the lender is willing to comply with §1303.49;

(11) The terms of any proposed or existing loan(s) related to purchase, construction or major renovation of the facility, including copies of any funding commitment letters, mortgages, promissory notes, potential security agreements to be entered into, information on all other sources of funding, construction or major renovation, and any restrictions or conditions imposed by other funding sources;

(12) A Phase I environmental site assessment that describes the environmental condition of the proposed facility site and any structures on the site;

(13) A description of the efforts by the grantee to coordinate or collaborate with other providers in the community to seek assistance, including financial assistance, prior to the use of funds under this section; and,

(14) Any additional information the responsible HHS official may require.

(b) *Additional requirements for leased properties.* (1) If a grantee applies to renovate leased property, it must submit to the responsible HHS official information described in paragraph (a) of this section, a copy of the existing or proposed lease agreement, and the landlord or lessor's consent.

(2) If a grantee applies to purchase a modular unit it intends to site on leased property or on other property the grantee does not own, the grantee must submit to the responsible HHS official information described in paragraph (a) of this section and a copy of the proposed lease or other occupancy agreement that will allow the grantee access to the modular unit for at least 15 years.

(c) *Non-federal match.* Any non-federal match associated with facilities activities becomes part of the federal share of the facility.

§1303.45 Cost-comparison to purchase, construct, and renovate facilities.

(a) *Cost comparison.* (1) If a grantee proposes to purchase, construct, or renovate a facility, it must submit a detailed cost estimate of the proposed activity, compare the costs associated with the proposed activity to other available alternatives in the service area, and provide any additional information the responsible HHS official requests. The grantee must demonstrate that the proposed activity will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out program.

(2) In addition to requirements in paragraph (a)(1) of this section, the grantee must:

(i) Identify who owns the property;

(ii) List all costs related to the purchase, construction, or renovation;

(iii) Identify costs over the structure's useful life, which is at least 20 years for a facility that the grantee purchased or constructed and at least 15 years for a modular unit the grantee renovated, and deferred costs, including mortgage balloon payments, as costs with associated due dates; and,

(iv) Demonstrate how the proposed purchase, construction, or major renovation is consistent with program management and fiscal goals, community needs, enrollment and program options and how the proposed facility will support the grantee as it provides quality services to children and families.

(b) *Continue purchase or refinance.* To use funds to continue purchase on a facility or to refinance an existing indebtedness, the grantee must compare the costs of continued purchase against the cost of purchasing a comparable facility in the service area over the remaining years of the facility's useful life. The grantee must demonstrate that the proposed activity will result in savings when compared to the cost that would be incurred to acquire the use of an alternative facility to carry out the program.

(c) *Multi-purpose use.* If the grantee intends to use a facility to operate a Head Start program and for another purpose, it must disclose what percentage of the facility will be used for non-Head Start activities, along with costs associated with those activities, in accordance with applicable cost principles.

§1303.46 Recording and posting notices of federal interest.

(a) *Survival of federal interest.* A grantee that receives funds under this subpart must file notices of federal interest as set forth in paragraph (b) of this section. Federal interest cannot be defeated by a grantee's failure to file a notice of federal interest.

(b) *Recording notices of federal interest.* (1) If a grantee uses federal funds to purchase real property or a facility, excluding modular

units, appurtenant to real property, it must record a notice of federal interest in the official real property records for the jurisdiction where the facility is or will be located. The grantee must file the notice of federal interest as soon as it uses Head Start funds to either fully or partially purchase a facility or real property where a facility will be constructed or as soon as it receives permission from the responsible HHS official to use Head Start funds to continue purchase on a facility.

(2) If a grantee uses federal funds in whole or in part to construct a facility, it must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to construct the facility.

(3) If a grantee uses federal funds to renovate a facility that it, or a third party owns, the grantee must record the notice of federal interest in the official real property records for the jurisdiction in which the facility is located as soon as it receives the notice of award to renovate the facility.

(4) If a grantee uses federal funds in whole or in part to purchase a modular unit or to renovate a modular unit, the grantee must post the notice of federal interest, in clearly visible locations, on the exterior of the modular unit and inside the modular unit.

§ 1303.47 Contents of notices of federal interest.

(a) *Facility and real property a grantee owns.* A notice of federal interest for a facility, other than a modular unit, and real property the grantee owns or will own, must include:

(1) The grantee's correct legal name and current mailing address;

(2) A legal description of the real property;

(3) Grant award number, amount and date of initial facilities funding award or initial use of base grant funds for ongoing purchase or mortgage payments;

(4) A statement that the notice of federal interest includes funds awarded in grant award(s) and any Head Start funds subsequently used to purchase, construct or to make major renovations to the real property;

(5) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(6) A statement that the facility and real property will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(7) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer of the property to another party or any other action the grantee takes without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body received a copy of the notice of federal interest prior to filing and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who drafted the notice.

(b) *Facility leased by a grantee.* (1) A notice of federal interest for a leased facility, excluding a modular unit, on land the grantee does not own, must be recorded in the official real property records for the jurisdiction where the facility is located and must include:

(i) The grantee's correct legal name and current mailing address;

(ii) A legal description of affected real property;

(iii) The grant award number, amount and date of initial funding award or initial use of base grant funds for major renovation;

(iv) Acknowledgement that the notice of federal interest includes any Head Start funds subsequently used to make major renovations on the affected real property;

(v) A statement the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations; and,

(vi) A lease or occupancy agreement that includes the required information from paragraphs (b)(1)(i) through (v) of this section may be recorded in the official real property records for the jurisdiction where the facility is located to serve as a notice of federal interest.

(2) If a grantee cannot file the lease or occupancy agreement described in paragraph (b)(1)(vi) of this section in the official real property records for the jurisdiction where the facility is located, it may file an abstract. The abstract must include the names and addresses of parties to the lease or occupancy agreement, terms of the lease or occupancy agreement, and information described in paragraphs (a)(1) through (9) of this section.

(c) *Modular units.* A notice of federal interest on a modular unit the grantee purchased or renovated must be visible and clearly posted on the exterior of the modular and inside the modular and must include:

(1) The grantee's correct legal name and current mailing address;

(2) The grant award number, amount and date of initial funding award or initial use of base grant funds to purchase or renovate;

(3) A statement that the notice of federal interest includes any Head Start funds subsequently used for major renovations to the modular unit;

(4) A statement that the facility and real property will only be used for purposes consistent with the Act and applicable Head Start regulations;

(5) A statement that the modular unit will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the responsible HHS official's written permission;

(6) A statement that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer to another party, or any other action the grantee takes without the responsible HHS official's written permission;

(7) A statement that the modular unit cannot be moved to another location without the responsible HHS official's written permission;

(8) A statement that confirms that the agency's governing body has received a copy of the filed notice of federal interest and the date the governing body was provided with a copy; and,

(9) The name, title, and signature of the person who completed the notice for the grantee agency.

§ 1303.48 Grantee limitations on federal interest.

(a) A grantee cannot mortgage, use as collateral for a credit line or for other loan obligations, or, sell or transfer to another party, a facility, real property, or a modular unit it has purchased, constructed or renovated with Head Start funds, without the responsible HHS official's written permission.

(b) A grantee must have the responsible HHS official's written permission before it can use real property, a facility, or a modular unit subject to federal interest for a purpose other than that for which the grantee's application was approved.

§ 1303.49 Protection of federal interest in mortgage agreements.

(a) Any mortgage agreement or other security instrument that is secured by real property or a modular unit constructed or purchased in whole or in part with federal funds or subject to renovation with federal funds must:

(1) Specify that the responsible HHS official can intervene in case the grantee defaults on, terminates or withdraws from the agreement;

(2) Designate the responsible HHS official to receive a copy of any notice of default given to the grantee under the terms of the agreement and include the regional grants management officer's current address;

(3) Include a clause that requires any action to foreclose the mortgage agreement or security agreement be suspended for 60 days after the responsible HHS official receives the default notice to allow the responsible HHS official reasonable time to respond;

(4) Include a clause that preserves the notice of federal interest and the grantee's obligation for its federal share if the responsible HHS official fails to respond to any notice of default provided under this section;

(5) Include a statement that requires the responsible HHS official to be paid the federal interest before foreclosure proceeds are paid to the lender, unless the official's rights under the notice of federal interest have been subordinated by a written agreement in conformance with §1303.51;

(6) Include a clause that gives the responsible HHS official the right to cure any default under the agreement within the designated period to cure the default; and,

(7) Include a clause that gives the responsible HHS official the right to assign or transfer the agreement to another interim or permanent grantee.

(b) A grantee must immediately notify the responsible HHS official of any default under an agreement described in paragraph (a) of this section.

§ 1303.50 Third party leases and occupancy arrangements.

(a) After November 7, 2016, if a grantee receives federal funds to purchase, construct or renovate a facility on real property the grantee does not own or to purchase or renovate a modular unit on real property the grantee does not own, the grantee must have a lease or other occupancy agreement of at least 30 years for purchase or construction of a facility and at least 15 years for a major renovation or placement of a modular unit.

(b) The lease or occupancy agreement must:

(1) Provide for the grantee's right of continued use and occupancy of the leased or occupied premises during the entire term of the lease;

(2) Designate the regional grants management officer to receive a copy of any notice of default given to the grantee under the terms of the agreement and include the regional grants management officer's current address;

(3) Specify that the responsible HHS official has the right to cure any default under the lease or occupancy agreement within the designated period to cure default; and,

(4) Specify that the responsible HHS official has the right to transfer the lease to another interim or replacement grantee.

§ 1303.51 Subordination of the federal interest.

Only the responsible HHS official can subordinate federal interest to the rights of a lender or other third party. Subordination agreements must be in writing and the mortgage agreement or security agreement for which subordination is requested must comply with §1303.49. When the amount of federal funds already contributed to the facility exceeds the amount to be provided by the

lender seeking subordination, the federal interest may only be subordinated if the grantee can show that funding is not available without subordination of the federal interest.

§ 1303.52 Insurance, bonding, and maintenance.

(a) *Purpose.* If a grantee uses federal funds to purchase or continue purchase on a facility, excluding modular units, the grantee must obtain a title insurance policy for the purchase price that names the responsible HHS official as an additional loss payee.

(b) *Insurance coverage.* (1) If a grantee uses federal funds to purchase or continue purchase on a facility or modular unit the grantee must maintain physical damage or destruction insurance at the full replacement value of the facility, for as long as the grantee owns or occupies the facility.

(2) If a facility is located in an area the National Flood Insurance Program defines as high risk, the grantee must maintain flood insurance for as long as the grantee owns or occupies the facility.

(3) A grantee must submit to the responsible HHS official, within 10 days after coverage begins, proof of insurance coverage required under paragraphs (a) and (b) of this section.

(c) *Maintenance.* A grantee must keep all facilities purchased or constructed in whole or in part with Head Start funds in good repair in accordance with all applicable federal, state, and local laws, rules and regulations, including Head Start requirements, zoning requirements, building codes, health and safety regulations and child care licensing standards.

§ 1303.53 Copies of documents.

A grantee must submit to the responsible HHS official, within 10 days after filing or execution, copies of deeds, leases, loan instruments, mortgage agreements, notices of federal interest, and other legal documents related to the use of Head Start funds for purchase, construction, major renovation, or the discharge of any debt secured by the facility.

§ 1303.54 Record retention.

A grantee must retain records pertinent to the lease, purchase, construction or renovation of a facility funded in whole or in part with Head Start funds, for as long as the grantee owns or occupies the facility, plus three years.

§ 1303.55 Procurement procedures.

(a) A grantee must comply with all grants management regulations, including specific regulations applicable to transactions in excess of the current simplified acquisition threshold, cost principles, and its own procurement procedures, and must provide, to the maximum extent practical, open and full competition.

(b) A grantee must obtain the responsible HHS official's written approval before it uses Head Start funds, in whole or in part, to contract construction or renovation services. The grantee must ensure these contracts are paid on a lump sum fixed-price basis.

(c) A grantee must obtain prior written approval from the responsible HHS official for contract modifications that would change the scope or objective of a project or would materially alter the costs, by increasing the amount of grant funds needed to complete the project.

(d) A grantee must ensure all construction and renovation contracts paid, in whole or in part with Head Start funds contain a clause that gives the responsible HHS official or his or her designee access to the facility, at all reasonable times, during construction and inspection.

§ 1303.56 Inspection of work.

The grantee must submit to the responsible HHS official a final facility inspection report by a licensed engineer or architect within 30 calendar days after the project is completed. The inspection report must certify that the facility complies with local building codes, applicable child care licensing requirements, is structurally sound and safe for use as a Head Start facility, complies with the access requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Flood Disaster Protection Act of 1973, and complies with National Historic Preservation Act of 1966.

Subpart F—Transportation

§ 1303.70 Purpose.

(a) *Applicability.* This rule applies to all agencies, including those that provide transportation services, with the exceptions and exclusions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider.

(b) *Providing transportation services.* (1) If a program does not provide transportation services, either for all or a portion of the children, it must provide reasonable assistance, such as information about public transit availability, to the families of such children to arrange transportation to and from its activities, and provide information about these transportation options in recruitment announcements.

(2) A program that provides transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the

quality and the availability of transportation services.

(3) A program that provides transportation services must ensure all accidents involving vehicles that transport children are reported in accordance with applicable state requirements.

(c) *Waiver.* (1) A program that provides transportation services must comply with all provisions in this subpart. A Head Start program may request to waive a specific requirement in this part, in writing, to the responsible HHS official, as part of an agency's annual application for financial assistance or amendment and must submit any required documentation the responsible HHS official deems necessary to support the waiver. The responsible HHS official is not authorized to waive any requirements with regard to children enrolled in an Early Head Start program. A program may request a waiver when:

(i) Adherence to a requirement in this part would create a safety hazard in the circumstances faced by the agency; and,

(ii) For preschool children, compliance with requirements related to child restraint systems at §§1303.71(d) and 1303.72(a)(1) or bus monitors at §1303.72(a)(4) will result in a significant disruption to the program and the agency demonstrates that waiving such requirements is in the best interest of the children involved.

(2) The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571.

§1303.71 Vehicles.

(a) *Required use of schools buses or allowable alternative vehicles.* A program, with the exception of transportation services to children served under a home-based option, must ensure all vehicles used or purchased with grant funds to provide transportation services to enrolled children are school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers.

(b) *Emergency equipment.* A program must ensure each vehicle used in providing such services is equipped with an emergency communication system clearly labeled and appropriate emergency safety equipment, including a seat belt cutter, charged fire extinguisher, and first aid kit.

(c) *Auxiliary seating.* A program must ensure any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under paragraph (e)(2)(i) of this section.

(d) *Child restraint systems.* A program must ensure each vehicle used to transport children receiving such services is equipped for use of age-, height- and weight-appropriate child safety restraint systems as defined in part 1305 of this chapter.

(e) *Vehicle maintenance.* (1) A program must ensure vehicles used to provide such services are in safe operating condition at all times.

(2) The program must:

(i) At a minimum, conduct an annual thorough safety inspection of each vehicle through an inspection program licensed or operated by the state;

(ii) Carry out systematic preventive maintenance on vehicles; and,

(iii) Ensure each driver implements daily pre-trip vehicle inspections.

(f) *New vehicle inspection.* A program must ensure bid announcements for school buses and allowable alternate vehicles to transport children in its program include correct specifications and a clear statement of the vehicle's intended use. The program must ensure vehicles are examined at delivery to ensure they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

§1303.72 Vehicle operation.

(a) *Safety.* A program must ensure:

(1) Each child is seated in a child restraint system appropriate to the child's age, height, and weight;

(2) Baggage and other items transported in the passenger compartment are properly stored and secured, and the aisles remain clear and the doors and emergency exits remain unobstructed at all times;

(3) Up-to-date child rosters and lists of the adults each child is authorized to be released to, including alternates in case of emergency, are maintained and no child is left behind, either at the classroom or on the vehicle at the end of the route; and,

(4) With the exception of transportation services to children served under a home-based option, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary.

(b) *Driver qualifications.* A program, with the exception of transportation services to children served under a home-based option, must ensure drivers, at a minimum:

(1) In states where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operating; and,

(2) Meet any physical, mental, and other requirements as necessary to perform job-related functions with any necessary reasonable accommodations.

(c) *Driver application review.* In addition to the applicant review process prescribed §1302.90(b) of this chapter, a program, with the exception of transportation services to

children served under a home-based option, must ensure the applicant review process for drivers includes, at minimum:

(1) Disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) A check of the applicant's driving record through the appropriate state agency, including a check of the applicant's record through the National Driver Register, if available;

(3) A check that drivers qualify under the applicable driver training requirements in the state or tribal jurisdiction; and,

(4) After a conditional employment offer to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(d) *Driver training.* (1) A program must ensure any person employed as a driver receives training prior to transporting any enrolled child and receives refresher training each year.

(2) Training must include:

(i) Classroom instruction and behind-the-wheel instruction sufficient to enable the driver to operate the vehicle in a safe and efficient manner, to safely run a fixed route, to administer basic first aid in case of injury, and to handle emergency situations, including vehicle evacuation, operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints, conduct routine maintenance and safety checks of the vehicle, and maintain accurate records as necessary; and,

(ii) Instruction on the topics listed in §1303.75 related to transportation services for children with disabilities.

(3) A program must ensure the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance.

(e) *Bus monitor training.* A program must train each bus monitor before the monitor begins work, on child boarding and exiting procedures, how to use child restraint systems, completing any required paperwork, how to respond to emergencies and emergency evacuation procedures, how to use special equipment, child pick-up and release procedures, how to conduct and pre- and post-trip vehicle checks. Bus monitors are also subject to staff safety training requirements in §1302.47(b)(4) of this chapter including Cardio Pulmonary Resuscitation (CPR) and first aid.

§1303.73 Trip routing.

(a) A program must consider safety of the children it transports when it plans fixed routes.

(b) A program must also ensure:

(1) The time a child is in transit to and from the program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical;

(2) Vehicles are not loaded beyond maximum passenger capacity at any time;

(3) Drivers do not back up or make U-turns, except when necessary for safety reasons or because of physical barriers;

(4) Stops are located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle;

(5) When possible, stops are located to eliminate the need for children to cross the street or highway to board or leave the vehicle;

(6) Either a bus monitor or another adult escorts children across the street to board or leave the vehicle if curbside pick-up or drop off is impossible; and,

(7) Drivers use alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing.

§1303.74 Safety procedures.

(a) A program must ensure children who receive transportation services are taught safe riding practices, safety procedures for boarding and leaving the vehicle and for crossing the street to and from the vehicle at stops, recognition of the danger zones around the vehicle, and emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(b) A program that provides transportation services must ensure at least two bus evacuation drills in addition to the one required under paragraph (a) of this section are conducted during the program year.

§1303.75 Children with disabilities.

(a) A program must ensure there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) A program must ensure special transportation requirements in a child's IEP or IFSP are followed, including special pick-up and drop-off requirements, seating requirements, equipment needs, any assistance that

may be required, and any necessary training for bus drivers and monitors.

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and Their Appeals

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AUTHORITY: 42 U.S.C. 9801 *et seq.*

Subpart A—Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and Their Appeals

§ 1304.1 Purpose.

(a) Section 641A(c) of the Act requires the Secretary to monitor whether a grantee meets program governance, program operations, and financial and administrative standards described in this regulation and to identify areas for improvements and areas of strength as part of the grantee's ongoing self-assessment process. This subpart focuses on the monitoring process. It discusses areas of noncompliance, deficiencies, and corrective action through quality improvement plans.

(b) Section 646(a) of the Act requires the Secretary to prescribe procedures for notice and appeal for certain adverse actions. This subpart establishes rules and procedures to suspend financial assistance to a grantee, deny a grantee's application for refunding, terminate, or reduce a grantee's assistance under the Act when the grantee improperly uses federal funds or fails to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, if the grantee loses its legal status or financial viability. This subpart does not apply to reductions to a grantee's financial assistance based on chronic under-enrollment procedures at section 641A(h) of the Act or to matters described in subpart B. This subpart does not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964. Except as otherwise provided for in this subpart, the appeals and processes in this subpart will be governed by the Departmental Appeals Board regulations at 45 CFR part 16.

§ 1304.2 Monitoring.

(a) *Areas of noncompliance.* If a responsible HHS official determines through monitoring, pursuant to section 641(A)(c)(1) and (2) of the Act, that a grantee fails to comply with any of the standards described in parts 1301, 1302, and 1303 of this chapter, the official will notify the grantee promptly in writing, identify the area of noncompliance, and specify when the grantee must correct the area of noncompliance.

(b) *Deficiencies.* If the Secretary determines that a grantee meets one of the criteria for a deficiency, as defined in section 637(2)(C) of the Act, the Secretary shall inform the grantee of the deficiency. The grantee must correct the deficiency pursuant to section 641A(e)(1)(B) of the Act, as the responsible HHS official determines.

(c) *Quality improvement plans.* If the responsible HHS official does not require the grantee to correct a deficiency immediately as

prescribed under section 641A(e)(1)(B)(i) of the Act, the grantee must submit to the official, for approval, a quality improvement plan that adheres to section 641A(e)(2)(A) of the Act.

§ 1304.3 Suspension with notice.

(a) *Grounds to suspend financial assistance with notice.* If a grantee breaches or threatens to breach any requirement stated in §§1304.3 through 1304.5, the responsible HHS official may suspend the grantee's financial assistance, in whole or in part, after it has given the grantee notice and an opportunity to show cause why assistance should not be suspended.

(b) *Notice requirements.* (1) The responsible HHS official must notify the grantee in writing that ACF intends to suspend financial assistance, in whole or in part. The notice must:

(i) Specify grounds for the suspension;

(ii) Include the date suspension will become effective;

(iii) Inform the grantee that it has the opportunity to submit to the responsible HHS official, at least seven days before suspension becomes effective, any written material it would like the official to consider, and to inform the grantee that it may request, in writing, no later than seven days after the suspension notice was mailed, to have an informal meeting with the responsible HHS official;

(iv) Invite the grantee to voluntarily correct the deficiency; and,

(v) Include a copy of this subpart.

(2) The responsible HHS official must promptly transmit the suspension notice to the grantee. The notice becomes effective when the grantee receives the notice, when the grantee refuses delivery, or when the suspension notice is returned to sender unclaimed.

(3) The responsible HHS official must send a copy of the suspension notice to any delegate agency whose actions or whose failures to act substantially caused or contributed to the proposed suspension. The responsible HHS official will inform the delegate agency that it is entitled to submit written material to oppose the suspension and to participate in the informal meeting, if one is held. In addition, the responsible HHS official may give notice to the grantee's other delegate agencies.

(4) After the grantee receives the suspension notice, it has three days to send a copy of the notice to delegate agencies that would be financially affected by a suspension.

(c) *Opportunity to show cause.* The grantee may submit to the responsible HHS official any written material to show why financial assistance should not be suspended. The grantee may also request, in writing, to have an informal meeting with the responsible HHS official. If the grantee requests an informal meeting, the responsible HHS official must schedule the meeting within seven days after the grantee receives the suspension notice.

(d) *Extensions.* If the responsible HHS official extends the time or the date by which a grantee has to make requests or to submit material, it must notify the grantee in writing.

(e) *Decision.* (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grantee has adequately corrected what led to suspension, and will render a decision within five days after the informal meeting. If no informal meeting is held, the responsible HHS official will render a decision within five days after it receives written material from all concerned parties.

(2) If the responsible HHS official finds the grantee failed to show cause why ACF should not suspend financial assistance, the official may suspend financial assistance, in whole or in part, and under terms and conditions as he or she deems appropriate.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grantee requests the suspension continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's suspension is lifted, or as otherwise provided under section 646(a)(5)(B) of the Act.

(f) *Obligations incurred during suspension.* New obligations the grantee incurs while under suspension are not allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations the grantee properly incurred before suspension and not in anticipation of suspension or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(g) *Modify or rescind suspension.* The responsible HHS official may modify or rescind suspension at any time, if the grantee can satisfactorily show that it has adequately corrected what led to suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

§ 1304.4 Emergency suspension without advance notice.

(a) *Grounds to suspend financial assistance without advance notice.* The responsible HHS official may suspend financial assistance, in whole or in part, without prior notice and an opportunity to show cause if there is an emergency situation, such as a serious risk for substantial injury to property or loss of project funds, a federal, state, or local criminal statute violation, or harm to staff or participants' health and safety.

(b) *Emergency suspension notification requirements.* (1) The emergency suspension notification must:

(i) Specify the grounds for the suspension;

(ii) Include terms and conditions of any full or partial suspension;

(iii) Inform that grantee it cannot make or incur any new expenditures or obligations under suspended portion of the program; and,

(iv) Advise that within five days after the emergency suspension becomes effective, the grantee may request, in writing, an informal meeting with the responsible HHS official to show why the basis for the suspension was not valid and should be rescinded and that the grantee has corrected any deficiencies.

(2) The responsible HHS official must promptly transmit the emergency suspension notification to the grantee that shows the date of receipt. The emergency suspension becomes effective upon delivery of the notification or upon the date the grantee refuses delivery, or upon return of the notification unclaimed.

(3) Within two workdays after the grantee receives the emergency suspension notification, the grantee must send a copy of the notice to delegate agencies affected by the suspension.

(4) The responsible HHS official must inform affected delegate agencies that they have the right to participate in the informal meeting.

(c) *Opportunity to show cause.* If the grantee requests an informal meeting, the responsible HHS official must schedule a meeting within five workdays after it receives the grantee's request. The suspension will continue until the grantee has been afforded such opportunity and until the responsible HHS official renders a decision. Notwithstanding provisions in this section, the responsible HHS official may proceed to deny refunding or to initiate termination proceedings at any time even though the grantee's financial assistance has been suspended in whole or in part.

(d) *Decision.* (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grantee has adequately corrected what led to suspension, and render a decision within five work days after the informal meeting.

(2) If the responsible HHS official finds the grantee failed to show cause why suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part, and under the terms and conditions specified in the emergency suspension notification.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grantee requests the suspension to continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's emergency suspension is lifted or a new grantee is selected.

(e) *Obligations incurred during suspension.* Any new obligations the grantee incurs during the suspension period will not be allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if those costs result from obligations properly incurred before suspension and not in anticipation of suspension, denial of refunding or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(f) *Modify or rescind suspension.* The responsible HHS official may modify or rescind suspension at any time, if the grantee can satisfactorily show that is has adequately corrected what led to the suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

§ 1304.5 Termination and denial of refunding.

(a) *Grounds to terminate financial assistance or deny a grantee's application for refunding.* (1) A responsible HHS official may terminate financial assistance in whole or in part to a grantee or deny a grantee's application for refunding.

(2) The responsible HHS official may terminate financial assistance in whole or in part, or deny refunding to a grantee for any one or for all of the following reasons:

(i) The grantee is no longer financially viable;

(ii) The grantee has lost the requisite legal status or permits;

(iii) The grantee has failed to timely correct one or more deficiencies as defined in the Act;

(iv) The grantee has failed to comply with eligibility requirements;

(v) The grantee has failed to comply with the Head Start grants administration or fiscal requirements set forth in 45 CFR part 1303;

(vi) The grantee has failed to comply with requirements in the Act;

(vii) The grantee is debarred from receiving federal grants or contracts; or

(viii) The grantee has failed to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable federal or state requirements or policies.

(b) *Notice requirements.* (1) The responsible HHS official will notify the grantee and such notice will:

(i) Include the legal basis for termination or adverse action as described in paragraph (a) of this section;

(ii) Include factual findings on which the action is based or reference specific findings in another document that form the basis for termination or denial of refunding;

(iii) Cite to any statutory provisions, regulations, or policy issuances on which ACF relies for its determination;

(iv) Inform the grantee that it may appeal the denial or termination within 30 days to the Departmental Appeals Board, that the appeal will be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, that a copy of the appeal must sent to the responsible HHS official, and that it has the right to request and receive a hearing, as mandated under section 646 of the Act;

(v) Inform the grantee that only its board of directors, or an official acting on the board's behalf can appeal the decision;

(vi) Name the delegate agency, if the actions of that delegate are the basis, in whole or in part, for the proposed action; and,

(vii) Inform the grantee that the appeal must meet requirements in paragraph (c) of this section; and, that if the responsible HHS official fails to meet requirements in this paragraph, the pending action may be dismissed without prejudice or remanded to reissue it with corrections.

(2) The responsible HHS official must provide the grantee as much notice as possible, but must notify the grantee no later than 30 days after ACF receives the annual application for refunding, that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(c) *Grantee's appeal.* (1) The grantee must adhere to procedures and requirements for appeals in 45 CFR part 16, file the appeal with the Departmental Appeals Board, and serve a copy of the appeal on the responsible HHS official who issued the termination or denial of refunding notice. The grantees must also serve a copy of its appeal on any affected delegate.

(2) Unless funding has been suspended, funding will continue while a grantee appeals a termination decision, unless the responsible HHS official renders an adverse decision, or unless the current budget period is expired. If the responsible HHS official has not rendered a decision by the end of the current budget period, the official will award the grantee interim funding until a decision is made or the project period ends.

(d) *Funding during suspension.* If a grantee's funding is suspended, the grantee will not receive funding during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful.

(e) *Interim and replacement grantees.* The responsible HHS official may appoint an interim or replacement grantee as soon as a termination action is affirmed by the Departmental Appeals Board.

(f) *Opportunity to show cause.* (1) If the Departmental Appeals Board sets a hearing for a proposed termination or denial of refunding action, the grantee has five workdays to send a copy of the notice it receives from the Departmental Appeals Board, to all delegate agencies that would be financially affected by termination and to each delegate agency identified in the notice.

(2) The grantee must send to the Departmental Appeals Board and to the responsible HHS official a list of the delegate agencies it notified and the dates when it notified them.

(3) If the responsible HHS official initiated proceedings because of a delegate agency's activities, the official must inform the delegate agency that it may participate in the hearing. If the delegate agency chooses to participate in the hearing, it must notify the responsible HHS official in writing within 30 days of the grantee's appeal. If any other delegate agency, person, agency or organization wishes to participate in the hearing, it may request permission to do so from the Departmental Appeals Board.

(4) If the grantee fails to appear at the hearing, without good cause, the grantee will be deemed to have waived its right to a hearing and consented to have the Departmental Appeals Board make a decision based on the parties' written information and argument.

(5) A grantee may waive the hearing and submit written information and argument for the record, within a reasonable period of time to be fixed by the Departmental Appeals Board.

(6) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

(g) *Decision.* The Departmental Appeals Board's decision and any measure the responsible HHS official takes after the decision is fully binding upon the grantee and its delegate agencies, whether or not they actually participated in the hearing.

§ 1304.6 Appeal for prospective delegate agencies.

(a) *Appeal.* If a grantee denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grantee's decision or inaction.

(b) *Process for prospective delegates.* To appeal, a prospective delegate must:

(1) Submits the appeal, including a copy of the funding application, to the responsible HHS official within 30 days after it receives the grantee's decision; or within 30 days after the grantee has had 120 days to review but has not notified the applicant of a decision; and,

(2) Provide the grantee with a copy of the appeal at the same time the appeal is filed with the responsible HHS official.

(c) *Process for grantees.* When an appeal is filed with the responsible HHS official, the grantee must respond to the appeal and submit a copy of its response to the responsible HHS official and to the prospective delegate agency within 30 work days.

(d) *Decision.* (1) The responsible HHS official will sustain the grantee's decision, if the official determines the grantee did not act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(2) The responsible HHS official will render a written decision to each party within a reasonable timeframe. The official's decision is final and not subject to further appeal.

(3) If the responsible HHS official finds the grantee did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grantee will be directed to reevaluate their applications.

§ 1304.7 Legal fees.

(a) An agency is not authorized to charge to its grant legal fees or other costs incurred to appeal terminations, reductions of funding, or denials of applications of refunding decisions.

(b) If a program prevails in a termination, reduction, or denial of refunding decision, the responsible HHS official may reimburse the agency for reasonable and customary legal fees, incurred during the appeal, if:

(1) The Departmental Appeals Board overturns the responsible HHS official's decision;

(2) The agency can prove it incurred fees during the appeal; and,

(3) The agency can prove the fees incurred are reasonable and customary.

Subpart B—Designation Renewal

§ 1304.10 Purpose and scope.

The purpose of this subpart is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The Designation Renewal System is established in this part to determine whether Head Start and Early Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they serve; meet the program and financial requirements and standards described in section 641A(a)(1) of the Head Start Act; and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) and (d) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start agency to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the Designation Renewal System established in this Part, and is subject instead to the requirements of § 1304.20.

§ 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

A Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever the responsible HHS official determines that one or more of the following seven conditions existed during the relevant time period covered by the responsible HHS official's review under § 1304.15:

(a) An agency has been determined by the responsible HHS official to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act in the relevant time period covered by the responsible HHS official's review under § 1304.15.

(b) An agency has been determined by the responsible HHS official based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the relevant time period covered by the responsible HHS official's review under § 1304.15 not to have:

(1) After December 9, 2011, established program goals for improving the school readiness of children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

(i) Appropriately reflect the ages of children, birth to five, participating in the program;

(ii) Align with the Birth to Five Head Start Child Outcomes Framework, state early learning guidelines, and the requirements and expectations of the schools, to the

extent that they apply to the ages of children, birth to five, participating in the program and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

(iii) Were established in consultation with the parents of children participating in the program.

(2) After December 9, 2011, taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating less than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design and other program decisions; and,

(ii) Analyzing individual ongoing, child-level assessment data for all children birth to age five participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development and to individualize the experiences, instructional strategies, and services to best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under §1304.15:

(1) After December 9, 2011, to have an average score across all classrooms observed below the following minimum thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(i) For the Emotional Support domain the minimum threshold is 4;

(ii) For the Classroom Organization domain, the minimum threshold is 3;

(iii) For the Instructional Support domain, the minimum threshold is 2;

(2) After December 9, 2011, to have an average score across all classrooms observed that is in the lowest 10 percent on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation among those currently being reviewed unless the average score across all classrooms observed for that CLASS: Pre-K domain is equal to or above the standard of excellence that demonstrates that the classroom interactions are above an exceptional level of quality. For all three domains, the ''standard of excellence'' is a 6.

(d) An agency has had a revocation of its license to operate a Head Start or Early Head Start center or program by a state or local licensing agency during the relevant time period covered by the responsible HHS official's review under §1304.15, and the revocation has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to the license revocation or restoration of the license after correction of the violation shall not affect application of this requirement after the competition for funding for the next five-year period has been announced.

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under §1304.16 and the suspension has not been overturned or withdrawn. If there is a pending appeal and the agency did not have an opportunity to show cause as to why the suspension should not have been imposed or why the suspension should have been lifted if it had already been imposed under this part, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause, the condition will be implemented regardless of appeal status.

(f) An agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP) any time during the relevant time period covered by the responsible HHS official's review under §1304.15 but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(g) An agency has been determined within the twelve months preceding the responsible HHS official's review under §1304.15 to be at risk of failing to continue functioning as a going concern. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General.

§1304.12 Grantee reporting requirements concerning certain conditions.

(a) Head Start agencies must report in writing to the responsible HHS official within 30 working days of December 9, 2011, if the agency has had a revocation of a license to

operate a center by a state of local licensing entity during the period between June 12, 2009, and December 9, 2011.

(b) Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events following December 9, 2011:

(1) The agency has had a revocation of a license to operate a center by a state or local licensing entity.

(2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(3) The agency has been debarred from receiving federal or state funds from any federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a state agency, or the cognizant federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern.

§ 1304.13 Requirements to be considered for designation for a five-year period when the existing grantee in a community is not determined to be delivering a high-quality and comprehensive Head Start program and is not automatically renewed.

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the responsible HHS official that demonstrates that it is the most qualified entity to deliver a high-quality and comprehensive Head Start or Early Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Act for Head Start. Any agency that has had its Head Start or Early Head Start grant terminated for cause in the preceding five years is excluded from competing in such competition for the next five years. A Head Start or Early Head Start agency that has had a denial of refunding, as defined in 45 CFR part 1305, in the preceding five years is also excluded from competing.

§ 1304.14 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

(a) In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will engage in government-to-government consultation with the appropriate tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency.

(1) The plan will be established and implemented within six months after the responsible HHS official's determination.

(2) Not more than six months after the implementation of that plan, the responsible HHS official will reevaluate the performance of the Indian Head Start or Early Head Start agency.

(3) If the Indian Head Start or Early Head Start agency is still not delivering a high-quality and comprehensive Head Start or Early Head Start program, the responsible HHS official will conduct an open competition to select a grantee to provide services for the community currently being served by the Indian Head Start or Early Head Start agency.

(b) A non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program.

(c) A non-Indian Head Start or Early Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated pursuant to this part.

§ 1304.15 Designation request, review and notification process.

(a) Grantees must apply to be considered for Designation Renewal.

(1) For the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for a five year period without competition shall request that status from ACF within six months of December 9, 2011.

(2) After the transition period, each Head Start or Early Head Start agency wishing to be considered to have their designation as a Head Start or Early Head Start agency renewed for another five year period without competition shall request that status from ACF at least 12 months before the end of their five year grant period or by such time as required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under §1304.11 were met by the Head Start and Early Head Start agency's program:

(1) During the first year of the transition period, ACF shall review the data on each Head Start and Early Head Start agency to determine if any of the conditions under §1304.11(a) or (d) through (g) were met by the agency's program since June 12, 2009.

(2) During the remainder of the transition period, ACF shall review the data on each Head Start and Early Head Start agency still under grants with indefinite project periods and for whom ACF has relevant data on all

of the conditions in §1304.11(a) through (g) to determine if any of the conditions under §1304.11(a) or (d) through (g) were met by the agency's program since June 12, 2009, or if the conditions under §1304.11(b) or (c) existed in the agency's program since December 9, 2011.

(3) Following the transition period, ACF shall review the data on each Head Start and Early Head Start agency in the fourth year of the grant to determine if any of the conditions under §1304.11 existed in the agency's program during the period of that grant.

(c) ACF will give notice to grantees on Designation Renewal System status, except as provided in §1304.14:

(1) During the first year of the transition period, ACF shall give written notice to all grantees meeting any of the conditions under §1304.11(a) or (d) through (g) since June 12, 2009, by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating that the Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period, identifying the conditions ACF found, and summarizing the basis for the finding. All grantees that do not meet any of the conditions under §1304.11(a) or (d) through (g) will remain under indefinite project periods until the time period described under paragraph (b)(2) of this section.

(2) During the remainder of the transition period, ACF shall give written notice to all grantees still under grants with indefinite project periods and on the conditions in §1304.11(a) through (g) by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1304.11(a) through (g) has been met during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(2)(i) of this section that it will be required to compete for funding for an additional five-year period.

(3) Following the transition period, ACF shall give written notice to all grantees at least 12 months before the expiration date of a Head Start or Early Head Start agency's then current grant by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under §1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or,

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under §1304.11 have been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under §1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(3)(i) of this section that it will be required to compete for funding for an additional five-year period.

§1304.16 Use of CLASS: Pre-K instrument in the Designation Renewal System.

Except when all children are served in a single classroom, ACF will conduct observations of multiple classes operated by the grantee based on a random sample of all classes and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation. After the observations are completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observations in each of the domains covered by the CLASS: Pre-K instrument. ACF will average CLASS: Pre-K instrument scores in each domain for the classes operated by the agency that ACF observed to determine the agency's score in each domain.

Subpart C—Selection of Grantees Through Competition

§1304.20 Selection among applicants.

(a) In selecting an agency to be designated to provide Head Start, Early Head Start, Migrant or Seasonal Head Start or tribal Head

Start or Early Head Start services, the responsible HHS official will consider the applicable criteria at Section 641(d) of the Head Start Act and any other criteria outlined in the funding opportunity announcement.

(b) In competitions to replace or potentially replace a grantee the responsible HHS official will also consider the extent to which the applicant supports continuity for participating children, the community and the continued employment of effective, well qualified personnel.

(c) In competitions to replace or potentially replace a current grantee, the responsible HHS official will give priority to applicants that have demonstrated capacity in providing effective, comprehensive, and well-coordinated early childhood education and development services and programs to children and their families.

Subpart D—Replacement of American Indian and Alaska Native Grantees

§1304.30 Procedure for indentification of alternative agency.

(a) An Indian tribe whose Head Start grant has been terminated, relinquished, designated for competition or which has been denied refunding as a Head Start agency, may identify an alternate agency and request the responsible HHS official to designate such agency as an alternative agency to provide Head Start services to the tribe if:

(1) The tribe was the only agency that was receiving federal financial assistance to provide Head Start services to members of the tribe; and,

(2) The tribe would be otherwise precluded from providing such services to its members because of the termination or denial of refunding.

(b)(1) The responsible HHS official, when notifying a tribal grantee of the intent to terminate financial assistance or deny its application for refunding, or its designation for competition must notify the grantee that it may identify an agency and request that the agency serve as the alternative agency in the event that the grant is terminated or refunding denied, or the grant is not renewed without competition.

(2) The tribe must identify the alternate agency to the responsible HHS official in writing.

(3) The responsible HHS official will notify the tribe, in writing, whether the alternative agency proposed by the tribe is found to be eligible for Head Start funding and capable of operating a Head Start program. If the alternative agency identified by the tribe is not an eligible agency capable of operating a Head Start program, the tribe will have 15 days from the date of the sending of the notification to that effect from the responsible HHS official to identify another agency and request that the agency be designated. The responsible HHS official will notify the tribe in writing whether the second proposed alternate agency is found to be an eligible agency capable of operating the Head Start program.

(4) If the tribe does not identify an eligible, suitable alternative agency, a grantee will be designated under these regulations.

(c) If the tribe appeals a termination of financial assistance or a denial of refunding, it will, consistent with the terms of §1304.5, continue to be funded pending resolution of the appeal. However, the responsible HHS official and the grantee will proceed with the steps outlined in this regulation during the appeal process.

(d) If the tribe does not identify an agency and request that the agency be appointed as the alternative agency, the responsible HHS official will seek a permanent replacement grantee under these regulations.

§1304.31 Requirements of alternative agency.

The agency identified by the Indian tribe must establish that it meets all requirements established by the Head Start Act and these requirements for designation as a Head Start grantee and that it is capable of conducting a Head Start program. The responsible HHS official, in deciding whether to designate the proposed agency, will analyze the capacity and experience of the agency according to the criteria found in section 641(d) of the Head Start Act and §1304.20.

§1304.32 Alternative agency—prohibition.

(a) No agency will be designated as the alternative agency pursuant to this subpart if the agency includes an employee who:

(1) Served on the administrative or program staff of the Indian tribal grantee described under section 646(e)(1)(A) of the Act; and

(2) Was responsible for a deficiency that:

(i) Relates to the performance standards or financial management standards described in section 641A(a)(1) of the Act; and,

(ii) Was the basis for the termination of assistance under section 646(e)(1)(A) of the Act or denial of refunding described in §1304.4.

(b) The responsible HHS official shall determine whether an employee was responsible for a deficiency within the meaning and context of this section.

Subpart E—Head Start Fellows Program

§1304.40 Purpose.

As provided in section 648A(d) of the Act, the Head Start Fellows Program is designed to enhance the ability of Head Start Fellows to make significant contributions to Head Start and to other child development and family services programs.

§ 1304.41 Fellows Program.

(a) *Selection.* An applicant must be working on the date of application in a local Head Start program or otherwise working in the field of child development and family services. The qualifications of the applicants for Head Start Fellowship positions will be competitively reviewed.

(b) *Placement.* Head Start Fellows may be placed in the Head Start national and regional offices; local Head Start agencies and programs; institutions of higher education; public or private entities and organizations concerned with services to children and families; and other appropriate settings.

(c) *Restrictions.* A Head Start Fellow who is not an employee of a local Head Start agency or program may only be placed in the national or regional offices within the Department of Health and Human Services that administer Head Start or local Head Start agencies. Head Start Fellows shall not be placed in any agency whose primary purpose, or one of whose major purposes is to influence federal, state or local legislation.

(d) *Duration.* Head Start Fellowships will be for terms of one year, and may be renewed for a term of one additional year.

(e) *Status.* For the purposes of compensation for injuries under chapter 81 of title 5, United States Code, Head Start Fellows shall be considered to be employees, or otherwise in the service or employment, of the federal government. Head Start Fellows assigned to the national or regional offices within the Department of Health and Human Services shall be considered employees in the Executive Branch of the federal government for the purposes of chapter 11 of title 18, United States Code, and for the purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

PART 1305—DEFINITIONS

Sec.
1305.1 Purpose.
1305.2 Terms.

AUTHORITY: 42 U.S.C. 9801 *et seq.*

§ 1305.1 Purpose.

The purpose of this part is to define terms for the purposes of this subchapter.

§ 1305.2 Terms.

For the purposes of this subchapter, the following definitions apply:

ACF means the Administration for Children and Families in the Department of Health and Human Services.

Act means the Head Start Act, Sec. 635 *et seq.*, Public Law 97–35, 95 Stat. 499–511 (codified as amended at 42 U.S.C. Section 9801, *et seq.*).

Agency means the body that receives the Head Start grant.

Aggregate child-level assessment data means the data collected by an agency on the status and progress of the children it serves that have been combined to provide summary information about groups of children enrolled in specific classes, centers, home-based or other options, groups or settings, or other groups of children such as dual language learners, or to provide summary information by specific domains of development.

Allowable alternate vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Budget period means the interval of time, into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes.

Case plan is defined as presented in 42 U.S.C. 675(1) which, in summary, is a written document that must include a number of specified items including, but is not limited to, a plan for safe and proper care of the child in foster care placement, health records, and a plan for ensuring the educational stability of the child in foster care.

Child-level assessment data means the data collected by an agency on an individual child from one or more valid and reliable assessments of a child's status and progress, including but not limited to direct assessment, structured observations, checklists, staff or parent report measures, and portfolio records or work samples.

Child records means records that:

(1) Are directly related to the child;

(2) Are maintained by the program, or by a party acting for the program; and

(3) Include information recorded in any way, such as print, electronic, or digital means, including media, video, image, or audio format.

Child restraint system means any device designed to restrain, seat, or position children that meets the current requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213, for children in the weight category established under the regulation, or any device designed to restrain, seat, or position children, other than a Type I seat belt as defined at 49 CFR 571.209, for children not in the weight category currently established by 49 CFR 571.213.

Child with a disability is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

CLASS: Pre-K means The Classroom Assessment Scoring System (CLASS). The CLASS is an observational instrument that assesses classroom quality in preschool through third grade classrooms. This tool meets the requirements described in 641(c)(1)(D) and

641A(c)(2)(F) of the Head Start Act (42 U.S.C. 9836(c)(1)(D) and 9836a(c)(2)(F)). The CLASS assesses three domains of classroom experience: Emotional Support, Classroom Organization, and Instructional Support.

(1) Emotional Support measures children's social and emotional functioning in the classroom, and includes four dimensions: Positive Climate, Negative Climate, Teacher Sensitivity and Regard for Student Perspectives. Positive Climate addresses the emotional connection, respect, and enjoyment demonstrated between teachers and children and among children. Negative Climate addresses the level of expressed negativity such as anger, hostility, or aggression exhibited by teachers and/or children in the classroom. Teacher Sensitivity addresses teachers' awareness of and responsivity to children's academic and emotional concerns. Regard for Student Perspectives addresses the degree to which teachers' interactions with children and classroom activities place an emphasis on children's interests, motivations, and points of view.

(2) Classroom Organization measures a broad array of classroom processes related to the organization and management of children's behavior, time, and attention in the classroom. It includes three dimensions: Behavior Management, Productivity, and Instructional Learning Formats. Behavior Management addresses how effectively teachers monitor, prevent, and redirect behavior. Productivity addresses how well the classroom runs with respect to routines and the degree to which teachers organize activities and directions so that maximum time can be spent on learning activities. Instructional Learning Formats addresses how teachers facilitate activities and provide interesting materials so that children are engaged and learning opportunities are maximized.

(3) Instructional Support measures the ways in which teachers implement curriculum to effectively support cognitive and language development. It includes three dimensions: Concept Development, Quality of Feedback, and Language Modeling. Concept Development addresses how teachers use instructional discussions and activities to promote children's higher order thinking skills in contrast to a focus on rote instruction. Quality of Feedback addresses how teachers extend children's learning through their responses to children's ideas, comments, and work. Language Modeling addresses the extent to which teachers facilitate and encourage children's language.

(4) Assessments with the CLASS involve observation-based measurement of each dimension on a seven point scale. A score ranging from 1 (minimally characteristic) to 7 (highly characteristic) is given for each dimension and represents the extent to which that dimension is characteristic of that classroom. Relevant dimension scores are used to calculate each domain score.

Commercial Driver's License (CDL) means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Construction means new buildings, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

Continuity of care means Head Start or Early Head Start services provided to children in a manner that promotes primary caregiving and minimizes the number of transitions in teachers and teacher assistants that children experience over the course of the day, week, program year, and to the extent possible, during the course of their participation from birth to age three in Early Head Start and in Head Start.

Deficiency is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

Delegate agency is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

Development and administrative costs mean costs incurred in accordance with an approved Head Start budget which do not directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Disclosure means to permit access to or the release, transfer, or other communication of PII contained in child records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Double session variation means a center-based option that employs a single teacher to work with one group of children in the morning and a different group of children in the afternoon.

Dual benefit costs mean costs incurred in accordance with an approved Head Start budget which directly relate to both development and administrative functions and to the program component services, including services to children with disabilities, as set forth and described in the Head Start program performance standards (45 CFR part 1304).

Dual language learner means a child who is acquiring two or more languages at the same time, or a child who is learning a second language while continuing to develop their first language. The term ''dual language learner'' may encompass or overlap substantially with other terms frequently used, such as bilingual, English language learner (ELL), Limited English Proficient (LEP), English learner, and children who speak a Language Other Than English (LOTE).

Early Head Start agency means a public or private non-profit or for-profit entity designated by ACF to operate an Early Head Start program to serve pregnant women and children from birth to age three, pursuant to Section 645A(e) of the Head Start Act.

Enrolled (or any variation of) means a child has been accepted and attended at least one class for center-based or family child care option or at least one home visit for the home-based option.

Enrollment year means the period of time, not to exceed twelve months, during which a Head Start program provides center or home-based services to a group of children and their families.

Facility means a structure, such as a building or modular unit, appropriate for use in carrying out a Head Start program and used primarily to provide Head Start services, including services to children and their families, or for administrative purposes or other activities necessary to carry out a Head Start program.

Family means all persons living in the same household who are supported by the child's parent(s)' or guardian(s)' income; and are related to the child's parent(s) or guardian(s) by blood, marriage, or adoption; or are the child's authorized caregiver or legally responsible party.

Federal interest is a property right which secures the right of the federal awarding agency to recover the current fair market value of its percentage of participation in the cost of the facility in the event the facility is no longer used for Head Start purposes by the grantee or upon the disposition of the property. When a grantee uses Head Start funds to purchase, construct or renovate a facility, or make mortgage payments, it creates a federal interest. The federal interest includes any portion of the cost of purchase, construction, or renovation contributed by or for the entity, or a related donor organization, to satisfy a matching requirement.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Financial viability means that an organization is able to meet its financial obligations, balance funding and expenses and maintain sufficient funding to achieve organizational goals and objectives.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments that are made.

Full-working-day means not less than 10 hours of Head Start or Early Head Start services per day.

Funded enrollment means the number of participants which the Head Start grantee is to serve, as indicated on the grant award.

Going concern means an organization that operates *without* the threat of liquidation for the foreseeable future, a period of at least 12 months.

Grantee means the local public or private non-profit agency or for-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Head Start agency means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start program to serve children age three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act.

Head Start Early Learning Outcomes Framework: Ages Birth to Five means the *Head Start Early Learning Outcomes Framework: Ages Birth to Five,* which describes the skills, behaviors, and knowledge that programs must foster in all children. It includes five central domains: Approaches to Learning; Social and Emotional Development; Language and Literacy; Cognition; and Perceptual, Motor, and Physical Development. These central domains are broken into five domains for infants and toddlers and seven domains for preschoolers. Infant and Toddler domains are Approaches to Learning; Social and Emotional Development; Language and Communication; Cognition; and Perceptual, Motor, and Physical Development. Preschool domains are Approaches to Learning; Social and Emotional Development; Language and Communication; Literacy; Mathematics Development; Scientific Reasoning; and Perceptual, Motor, and Physical Development. Domains are divided into sub-domains with goals that describe broad skills, behaviors, and concepts that are important for school success. Developmental progressions describe the skills, behaviors and concepts that children may demonstrate as they progress. As described in the Head Start Act, the Framework is central to program operations

that promote high-quality early learning environments (42 U.S.C. 9832(21)(G)(iv)(II)(aa), 42 U.S.C. 9835(o), 42 U.S.C. 9836(d)(2)(C), 42 U.S.C. 9836a(g)(2)(A), 42 U.S.C. 9837(f)(3)(E), 42 U.S.C. 9837a(a)(3), 42 U.S.C. 9837a(a)(14), 42 U.S.C. 9837b(a)(2)(B)(iii), 42 U.S.C. 9837b(a)(4)(A)(i), and 42 U.S.C. 9837b(a)(4)(B)(iii)).

Homeless children means the same as *homeless children and youths* in Section 725(2) of the McKinney-Vento Homeless Assistance Act at 42 U.S.C. 11434a(2).

Home visitor means the staff member in the home-based program option assigned to work with parents to provide comprehensive services to children and their families through home visits and group socialization activities.

Hours of planned class operations means hours when children are scheduled to attend. Professional development, training, orientation, teacher planning, data analysis, parent-teacher conferences, home visits, classroom sanitation, and transportation do not count toward the hours of planned class operations.

Income means gross cash income and includes earned income, military income (including pay and allowances, except those described in Section 645(a)(3)(B) of the Act), veteran's benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185 (available at *https://www2.census.gov/prod2/popscan/p60-185.pdf*).

Indian Head Start agency means a program operated by an Indian tribe (as defined by the Act) or designated by an Indian tribe to operate on its behalf.

Indian tribe is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

Individualized Education Program is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

Individualized Family Service Plan is defined in the same manner as presented in the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*).

Legal status means the existence of an applicant or grantee as a public agency or organization under the law of the state in which it is located, or existence as a private nonprofit or for-profit agency or organization as a legal entity recognized under the law of the state in which it is located. Existence as a private non-profit agency or organization may be established under applicable state or federal law.

Local agency responsible for implementing IDEA means the early intervention service provider under Part C of IDEA and the local educational agency under Part B of IDEA.

Major renovation means any individual or collection renovation that has a cost equal to or exceeding $250,000. It excludes minor renovations and repairs except when they are included in a purchase application.

Migrant family means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work and whose family income comes primarily from this activity.

Migrant or Seasonal Head Start Program means:

(1) With respect to services for migrant farm workers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and,

(2) With respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

Minor renovation means improvements to facilities, which do not meet the definition of major renovation.

Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program, regardless of the manner or extent to which the modular unit is attached to underlying real property.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting state driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

Parent means a Head Start child's mother or father, other family member who is a primary caregiver, foster parent or authorized caregiver, guardian or the person with whom the child has been placed for purposes of adoption pending a final adoption decree.

Participant means a pregnant woman or child who is enrolled in and receives services from a Head Start, an Early Head Start, a Migrant or Seasonal Head Start, or an American Indian and Alaska Native Head Start program.

Personally identifiable information (PII) means any information that could identify a specific individual, including but not limited to a child's name, name of a child's family member, street address of the child, social

security number, or other information that is linked or linkable to the child.

Program means a Head Start, Early Head Start, migrant, seasonal, or tribal program, funded under the Act and carried out by an agency, or delegate agency, to provide ongoing comprehensive child development services.

Program costs mean costs incurred in accordance with an approved Head Start budget which directly relate to the provision of program component services, including services to children with disabilities, as set forth and described in the Head Start Program Performance Standards (45 CFR part 1304).

Purchase means to buy an existing facility, including outright purchase, down payment or through payments made in satisfaction of a mortgage or other loan agreement, whether principal, interest or an allocated portion principal and/or interest. The use of grant funds to make a payment under a capital lease agreement, as defined in the cost principles, is a purchase subject to these provisions. Purchase also refers to an approved use of Head Start funds to continue paying the cost of purchasing facilities or refinance an existing loan or mortgage beginning in 1987.

Real property means land, including land improvements, buildings, structures and all appurtenances thereto, excluding movable machinery and equipment.

Recruitment area means that geographic locality within which a Head Start program seeks to enroll Head Start children and families. The recruitment area can be the same as the service area or it can be a smaller area or areas within the service area.

Relevant time period means:

(1) The 12 months preceding the month in which the application is submitted; or

(2) During the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

Repair means maintenance that is necessary to keep a Head Start facility in working condition. Repairs do not add significant value to the property or extend its useful life.

Responsible HHS official means the official of the Department of Health and Human Services who has authority to make grants under the Act.

School readiness goals mean the expectations of children's status and progress across domains of language and literacy development, cognition and general knowledge, approaches to learning, physical well-being and motor development, and social and emotional development that will improve their readiness for kindergarten.

School bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Service area means the geographic area identified in an approved grant application within which a grantee may provide Head Start services.

Staff means paid adults who have responsibilities related to children and their families who are enrolled in programs.

State is defined in the same manner as presented in the Head Start Act, 42 U.S.C. 9801.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or non-competing continuation renewal, extension or supplemental award);

(3) Withdrawal of the unobligated balance as of the expiration of a grant; and

(4) Annulment, *i.e.*, voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Total approved costs mean the sum of all costs of the Head Start program approved for a given budget period by the Administration for Children and Families, as indicated on the Financial Assistance Award. Total approved costs consist of the federal share plus any approved non-federal match, including non-federal match above the statutory minimum.

Transition period means the three-year time period after December 9, 2011, on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions under §1304.12 of this chapter that require recompetition or if the grantee will receive its first five-year grant non-competitively.

Transportation services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head

Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Verify or any variance of the word means to check or determine the correctness or truth by investigation or by reference.

SUBCHAPTER C—THE ADMINISTRATION FOR COMMUNITY LIVING

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

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AUTHORITY: 42 U.S.C. 3001 *et seq.;* title III of the Older Americans Act, as amended.

SOURCE: 53 FR 33766, Aug. 31, 1988, unless otherwise noted.

Subpart A—Introduction

§ 1321.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under title III of the Older Americans Act, as amended (Act). These requirements include:

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans, to stimulate the development or enhancement of comprehensive and coordinated community-based systems resulting in a continuum of services to older persons with special emphasis on older individuals with the greatest economic or social need, with

particular attention to low-income minority individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation and delivery of a comprehensive array of services and opportunities for all older Americans in the community. The intent is to use title III funds as a catalyst in bringing together public and private resources in the community to assure the provision of a full range of efficient, well coordinated and accessible services for older persons.

(c) Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area for the purpose of building comprehensive systems for older people throughout the State. Area agencies in turn make subgrants or contracts to service providers to perform certain specified functions.

§ 1321.3 Definitions.

Act means the Older Americans Act of 1965 as amended.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department means the Department of Health and Human Services.

Direct services, as used in this part, means any activity performed to provide services directly to an individual older person by the staff of a service provider, an area agency, or a State agency in a single planning and service area State.

Fiscal year, as used in this part, means the Federal Fiscal Year.

Frail, as used in this part, means having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

Human services, as used in § 1321.41(a)(1) of this part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

In-home service, as used in this part, includes: (a) Homemaker and home health aides; (b) visiting and telephone reassurance; (c) chore maintenance; (d) in-home respite care for families, including adult day care as a respite service for families; and (e) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home, and that is not available under other programs, except that not more than $150 per client may be expended under this part for such modification.

Means test, as used in the provison of services, means the use of an older person's income or resource to deny or limit that person's receipt of services under this part.

Official duties, as used in section 307(a)(12)(J) of the Act with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act or State law and carried out under the auspices and general direction of the State Long-Term Care Ombudsman.

Periodic, as used in sections 306(a)(6) and 307(a)(8) of the Act with respect to evaluations of, and public hearings on, activities carried out under State and area plans, means, at a minimum, once each fiscal year.

Reservation, as used in section 305(b)(4) of the Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaskan Native

regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

Service provider, as used in section 306(a)(1) of the Act with respect to the provison of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

Severe disability, as used to carry out the provisions of the Act, means a severe chronic disability attributable to mental and/or physical impairment of an individual that:

(a) Is likely to continue indefinitely; and

(b) Results in substantial functional limitation in 3 or more of the following major life activities:

(1) Self-care,

(2) Receptive and expressive language,

(3) Learning,

(4) Mobility,

(5) Self-direction,

(6) Capacity for independent living, and

(7) Economic self-sufficiency.

§ 1321.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board;

(b) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, except §75.206;

(c) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(d) 45 CFR part 81—Practice and Procedures for Hearings Under Part 80 of this title;

(e) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(f) 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(g) [Reserved]

(h) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities; and

(i) 5 CFR part 900, subpart F, Standards for a Merit System of Personnel Administration.

[53 FR 33766, Aug. 31, 1988, as amended at 81 FR 3022, Jan. 20, 2016]

Subpart B—State Agency Responsibilities

§ 1321.7 Mission of the State agency.

(a) The Older Americans Act intends that the State agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the State. This means that the State agency shall proactively carry out a wide range of functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, communities throughout the State. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) The State agency shall designate area agencies on aging for the purpose of carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as its area agencies on aging only those sub-state agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in §1321.53 below.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Older Americans Act are used to carry out the mission described for area agencies in §1321.53 below.

§ 1321.9 Organization and staffing of the State agency.

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part

and serve as the effective visible advocate for the elderly within the State.

(b) The State agency shall have an adequate number of qualified staff to carry out the functions prescribed in this part.

(c) The State agency shall have within the State agency, or shall contract or otherwise arrange with another agency or organization, as permitted by section 307(a)(12)(A), an Office of the State Long-Term Care Ombudsman, with a full-time State ombudsman and such other staff as are appropriate.

(d) If a State statute establishes a State ombudsman program which will perform the functions of section 307(a)(12) of the Act, the State agency continues to be responsible to assure that all of the requirements of the Act for this program are met regardless of the State legislation or source of funds. In such cases, the Governor shall confirm this through an assurance in the State plan.

§ 1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the ombudsman program whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness. The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records and other information maintained by the Ombudsman program. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in § 1324.11(e)(3) of this chapter.

[53 FR 33766, Aug. 31, 1988, as amended at 80 FR 7758, Feb. 11, 2015; 81 FR 35645, June 3, 2016]

§ 1321.13 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate and comment on Federal, State and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals and recommend any changes in these which the State agency considers to be appropriate;

(2) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons; and

(3) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby the Congress.

§ 1321.15 Duration, format and effective date of the State plan.

(a) A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three or four years.

(b) An approved State plan or amendment, as indentified in § 1321.17, becomes effective on the date designated by the Commissioner.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in § 1321.17 and § 1321.19, until it is approved.

§ 1321.17 Content of State plan.

To receive a grant under this part, a State shall have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification by the State of the sole State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all title III funds administered by a State agency, and the distribution of title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if appropriate.

(e) Provision of prior Federal fiscal year information related to low income minority and rural older individuals as required by sections 307(a) (23) and (29) of the Act.

(f) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.75 of this part, and the following assurances as prescribed by the Commissioner:

(1) Each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in State policies under § 1321.11;

(2) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(3) Procedures exist to ensure that all services under this part are provided without use of any means tests;

(4) All services provided under title III meet any existing State and local licensing, health and safety requirements for the provision of those services;

(5) Older persons are provided opportunities to voluntarily contribute to the cost of services;

(6) Area plans shall specify as submitted, or be amended annually to include, details of the amount of funds expended for each priority service during the past fiscal year;

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part, including the manner in which the ombudsman program operates at the State level and the relation of the ombudsman program to area agencies where area agencies have been designated;

(8) The State agency will require area agencies on aging to arrange for outreach at the community level that identifies individuals eligible for assistance under this Act and other programs, both public and private, and informs them of the availability of assistance. The outreach efforts shall place special emphasis on reaching older individuals with the greatest economic or social needs with particular attention to low income minority individuals, including outreach to identify older Indians in the planning and service area and inform such older Indians of the availability of assistance under the Act.

(9) The State agency shall have and employ appropriate procedures for data collection from area agencies on aging to permit the State to compile and transmit to the Commissioner accurate and timely statewide data requested by the Commissioner in such form as the Commissioner directs; and

(10) If the State agency proposes to use funds received under section 303(f) of the Act for services other than those for preventive health specified in section 361, the State plan shall demonstrate the unmet need for the services and explain how the services are appropriate to improve the quality of life of older individuals, particularly those with the greatest economic or social need, with special attention to low-income minorities.

(11) Area agencies shall compile available information, with necessary supplementation, on courses of postsecondary education offered to older individuals with little or no tuition. The assurance shall include a commitment by the area agencies to make a summary of the information available to older individuals at multipurpose senior centers, congregate nutrition sites, and in other appropriate places.

(12) Individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under this part shall be provided a meal on the same basis that meals are provided to volunteers pursuant to section 307(a)(13)(I) of the Act.

(13) The services provided under this part will be coordinated, where appropriate, with the services provided under title VI of the Act.

(14)(i) The State agency will not fund program development and coordinated

activities as a cost of supportive services for the administration of area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

(ii) State and area agencies on aging will, consistent with budgeting cycles (annually, biannually, or otherwise), submit the details of proposals to pay for program development and coordination as a cost of supportive services, to the general public for review and comment; and

(iii) The State agency certifies that any such expenditure by an area agency will have a direct and positive impact on the enhancement of services for older persons in the planning and service area.

(15) The State agency will assure that where there is a significant population of older Indians in any planning and service area that the area agency will provide for outreach as required by section 306(a)(6)(N) of the Act.

§ 1321.19 Amendments to the State plan.

(a) A State shall amend the State plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations,

(2) A material change in any law, organization, policy or State agency operation, or

(3) Information required annually by sections 307(a) (23) and (29) of the Act.

(b) Information required by paragraph (a)(3) of this section shall be submitted according to guidelines prescribed by the Commissioner.

(c) If a State intends to amend provisions of its plan required under §§ 1321.17 (a) or (f), it shall submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.17 (b) through (d), it shall amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.21 Submission of the State plan or plan amendment to the Commissioner for approval.

Each State plan, or plan amendment which requires approval of the Commissioner, shall be signed by the Governor or the Governor's designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan or plan amendment.

§ 1321.23 Notification of State plan or State plan amendment approval.

(a) The Commissioner approves a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Commissioner proposes to disapprove a State plan or amendment, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the State agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in subpart E of this part.

§ 1321.25 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency shall have a mechanism to obtain and shall consider the views of older persons and the public in developing and administering the State plan.

§ 1321.29 Designation of planning and service areas.

(a) Any unit of general purpose local government, region within a State recognized for area wide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(b) A State agency shall approve or disapprove any application submitted under paragraph (a) of this section.

(c) Any applicant under paragraph (a) of this section whose application for designation as a planning and service area is denied by a State agency may appeal the denial to the State agency, under procedures specified by the State agency.

(d) If the State denies an applicant for designation as a planning and service area under paragraph (a) of this section, the State shall provide a hearing on the denial of the application, if requested by the applicant, as well as issue a written decision.

§ 1321.31 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.29(a), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.29(a) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing within 30 days following receipt of a State's hearing decision.

(b) The Commissioner, or the Commissioner's designee, holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.29(a).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;

(2) A copy of the written decision of the State; and

(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of:

(1) Prior written notice to the applicant and the State agency of the date, time and location of the hearing;

(2) The required attendance of the head of the State agency or designated representatives;

(3) An opportunity for the applicant to be represented by counsel or other representative; and

(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may:

(1) Deny the appeal and uphold the decision of a State agency;

(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or

(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner will uphold the decision of the State agency if it followed the procedures specified in § 1321.29, and the hearing decision is not manifestly inconsistent with the purpose of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.33 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local office of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.35 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part or policies and procedures established and published by the State agency on aging; or

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or in conflict with the requirement of the Act that it function only as an area agency on aging.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Commissioner may extend the 180-day period if a State agency:

(1) Notifies the Commissioner in writing of its action under paragraph (c) of this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.37 Intrastate funding formula.

(a) The State agency, after consultation with all area agencies in the State, shall develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency shall publish the formula for review and comment by older persons, other appropriate agencies and organizations and the general public. The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency shall review and update its formula as often as a new State plan is submitted for approval.

(b) The intrastate funding formula shall provide for a separate allocation of funds received under section 303(f) for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(1) Which are medically underserved; and

(2) In which there are large numbers of individuals who have the greatest economic and social need for such services.

(c) The State agency shall submit its intrastate formula to the Commissioner for review and comment. The intrastate formula shall be submitted separately from the State plan.

§ 1321.41 Single State planning and service area.

(a) The Commissioner will approve the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and services areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in § 1321.29 shall be met.

(c) If the Commissioner approves a State's application under paragraph (a) this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service area plan which meets the requirements of section 306 and 307 of the Act.

(2) A State agency shall meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it shall follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.43 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State shall request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State shall submit the request together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, the Commissioner shall determine that all applicable requirements and procedures in §1321.29 and §1321.33 of this part, shall be met.

(e) If the request is approved, the Commissioner, based on the agreement between the States, increases the allotment of the State with lead responsibility for administering the programs within the interstate area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.45 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency, without the approval of the Commissioner, may transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency desiring such a transfer of allotment shall:

(1) Specify the percent which it proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a protion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.47 Statewide non-Federal share requirements.

The statewide non-Federal share for State or area plan administration shall not be less than 25 percent of the funds usesd under this part. All services statewide, including ombudsman services and services funded under Title III-B, C, D, E and F, shall be funded on a statewide basis with a non-Federal share of not less than 15 percent. Matching requirements for individual area agencies are determined by the State agency.

§ 1321.49 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency, to meet the required non-federal share applicable to its allotments under this part, shall spend under the State plan for both services and administration at least the average amount of State funds it spent under the plan for the three previous fiscal years. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for supportive and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.51 Confidentiality and disclosure of information.

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an order person, or obtained from an older person by a service provider or the State or area

agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

(c) A State or area agency on aging may not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

§ 1321.52 Evaluation of unmet need.

Each State shall submit objectively collected and statistically valid data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, and multipurpose senior centers gathered pursuant to section 307(a)(3)(A) of the Act to the Commissioner. The evaluations for each State shall consider all services in these categories regardless of the source of funding for the services. This information shall be submitted not later than June 30, 1989 and shall conform to guidance issued by the Commissioner.

Subpart C—Area Agency Responsibilities

§ 1321.53 Mission of the area agency.

(a) The Older Americans Act intends that the area agency on aging shall be the leader relative to all aging issues on behalf of all older persons in the planning and service area. This means that the area agency shall proactively carry out, under the leadership and direction of the State agency, a wide range of functions related to advocacy, planning, coordination, inter-agency linkages, information sharing, brokering, monitoring and evaluation, designed to lead to the development or enhancement of comprehensive and coordinated community based systems in, or serving, each community in the planning and service area. These systems shall be designed to assist older persons in leading independent, meaningful and dignified lives in their own homes and communities as long as possible.

(b) A comprehensive and coordinated community based system described in paragraph (a) of this section shall:

(1) Have a visible focal point of contact where anyone can go or call for help, information or referral on any aging issue;

(2) Provide a range of options:

(3) Assure that these options are readily accessible to all older persons: The independent, semi-dependent and totally dependent, no matter what their income;

(4) Include a commitment of public, private, voluntary and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, religious and fraternal organizations and older people in the community;

(6) Offer special help or targetted resources for the most vulnerable older persons, those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information or assistance is received, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for the vulnerable older person;

(9) Have a unique character which is tailored to the specific nature of the community;

(10) Be directed by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future.

(c) The resources made available to the area agency on aging under the Older Americans Act are to be used to finance those activities necessary to achieve elements of a community based system set forth in paragraph (b) of this section. For the purpose of assuring access to information and services for older persons, the area agency

shall work with elected community officials in the planning and service area to designate one or more focal points on aging in each community, as appropriate. The area agency shall list designated focal points in the area plan. It shall be the responsibility of the area agency, with the approval of the State agency, to define ''community'' for the purposes of this section. Since the Older Americans Act defines focal point as a ''facility'' established to encourage the maximum collocation and coordination of services for older individuals, special consideration shall be given to developing and/or designating multi-purpose senior centers as community focal points on aging. The area agency on aging shall assure that services financed under the Older Americans Act in, or on behalf of, the community will be either based at, linked to or coordinated with the focal points designated. The area agency on aging shall assure access from the designated focal points to services financed under the Older Americans Act. The area agency on aging shall work with, or work to assure that community leadership works with, other applicable agencies and institutions in the community to achieve maximum collocation at, coordination with or access to other services and opportunities for the elderly from the designated community focal points. The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State under § 1321.11.

§ 1321.55 Organization and staffing of the area agency.

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older persons; or

(2) A separate organizational unit within a multi-purpose agency which functions only for purposes of serving as the area agency on aging. Where the State agency on aging designates, as an area agency on aging, a separate organizational unit of a multipurpose agency which has been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act.

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to perform all of the functions prescribed in this part.

(c) The designated area agency continues to function in that capacity until either:

(1) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency; or

(2) The State agency withdraws the designation of the area agency as provided in § 1321.35.

§ 1321.57 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. The council shall advise the agency relative to:

(1) Developing and administering the area plan;

(2) Conducting public hearings;

(3) Representing the interest of older persons; and

(4) Reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the area agency in developing community-based systems of services. The advisory council shall be made up of:

(1) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this part;

(2) Representatives of older persons;

(3) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(4) Representatives of supportive services providers organizations;

(5) Persons with leadership experience in the private and voluntary sectors;

(6) Local elected officials; and
(7) The general public.
(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

§ 1321.59 Submission of an area plan and plan amendments to the State for approval.

The area agency shall submit the area plan and amendments to the State agency for approval following procedures specified by the State agency in the State policies prescribed by § 1321.11.

§ 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.
(b) In carrying out this responsibility, the area agency shall:
(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;
(2) Solicit comments from the public on the needs of older persons;
(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;
(4) Consult with and support the State's long-term care ombudsman program; and
(5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and
(c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services must needed by these groups to meet this requirement. However, the area agency may not permit a grantee or contractor under this part to employ a means test for services funded under this part.
(d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A–122.

Subpart D—Service Requirements

§ 1321.63 Purpose of services allotments under Title III.

(a) Title III of the Older Americans Act authorizes the distribution of Federal funds to the State agency on aging by formula for the following categories of services:
(1) Supportive services;
(2) Congregate meals services;
(3) Home delivered meals services;
(4) In-home services;
(5) Ombudsman services;
(6) Special needs services;
(7) Elder abuse services;
(8) Preventive health services; and
(9) Outreach services.

Funds authorized under these categories are for the purpose of assisting the State and its area agencies to develop or enhance for older persons comprehensive and coordinated community based systems as described in § 1321.53(b) throughout the State.
(b) Except for ombudsman services, State agencies on aging will award the funds made available under paragraph (a) of this section to designated area agencies on aging according to the formula determined by the State agency. Except where a waiver is granted by the State agency, area agencies shall award these funds by grant or contract to community services provider agencies and organizations. All funds awarded to area agencies under this part are for the purpose of assisting area agencies to develop or enhance

comprehensive and coordinated community based systems for older persons in, or serving, communities throughout the planning and service area.

§ 1321.65 Responsibilities of service providers under area plans.

As a condition for receipt of funds under this part, each area agency on aging shall assure that providers of services shall:

(a) Provide the area agency, in a timely manner, with statistical and other information which the area agency requires in order to meet its planning, coordination, evaluation and reporting requirements established by the State under § 1321.13;

(b) Specify how the provider intends to satisfy the service needs of low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older persons in the population serviced by the provider;

(c) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.67;

(d) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person, or the household of the older person, in imminent danger;

(e) Where feasible and appropriate, make arrangements for the availability of services to older persons in weather related emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

§ 1321.67 Service contributions.

(a) For services rendered with funding under the Older Americans Act, the area agency on aging shall assure that each service provider shall:

(1) Provide each older person with an opportunity to voluntarily contribute to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions; and

(3) Establish appropriate procedures to safeguard and account for all contributions.

(b) Each service provider shall use supportive services and nutrition services contributions to expand supportive services and nutrition services respectively. To that end, the State agency shall:

(1) Permit service providers to follow either the addition alternative or the cost sharing alternatives as stated in 45 CFR 75.307(e)(2) and (3); or

(2) A combination of the two alternatives.

(c) Each service provider under the Older Americans Act may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider shall consider the income ranges of older persons in the community and the provider's other sources of income. However, means tests may not be used for any service supported with funds under this part. State agencies, in developing State eligibility criteria for in-home services under section 343 of the Act, may not include a means test as an eligibility criterion.

(d) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

[53 FR 33766, Aug. 31, 1988, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1321.69 Service priority for frail, homebound or isolated elderly.

(a) Persons age 60 or over who are frail, homebound by reason of illness or incapacitating disability, or otherwise isolated, shall be given priority in the delivery of services under this part.

(b) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

§ 1321.71 Legal assistance.

(a) The provisions and restrictions in this section apply only to legal assistance providers and only if they are providing legal assistance under section 307(a)(15) of the Act.

(b) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(c) The area agency shall award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) shall:

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to provide legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(d) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(e) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(f) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(g) No provider shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases.

(1) ''Fee generating case'' means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when:

(i) Recovery of damages is not the principal object of the client; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

(3) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement.

(4) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(h) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) No provider or its employees shall contribute or make available Older Americans Act funds, personnel or equipment to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No provider or its employees shall intentionally identify the title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity;

(i) No funds made available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any nonjudicial Federal, State or local individual or body. Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, title III regulations or other applicable law. This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose;

(5) Providing a client with administrative representation in adjudicatory or rulemaking proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;

(6) Communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or

(7) Responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided that no such action will be taken without first obtaining the written approval of the responsible area agency.

(j) While carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;

(2) Encourage, direct, or coerce others to engage in such activities; or

(3) At any time engage in or encourage others to engage in:

(i) Any illegal activity; or

(ii) Any intentional identification of programs funded under the Act or recipient with any political activity.

(k) None of the funds made available under the Act may be used to pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.

§ 1321.73 Grant related income under Title III-C.

States and sub-grantees must require that their subgrantees' grant related income be used in either the matching or cost sharing alternative in 75.307(e)(3) or the additive alternative in § 75.307(e)(2) or a combination of the two. The deductive alternative described in § 75.307(e)(1) is not permitted.

[53 FR 33766, Aug. 31, 1988, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1321.75 Licenses and safety.

The State shall ensure:

(a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes; and

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

Subpart E—Hearing Procedures for State Agencies

§ 1321.77 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the previsions of 45 CFR part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 213.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HHS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), this subpart governs the procedures and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment:

(2) Determination that a State agency does not meet the requirements of this part:

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements, including failure to comply with any assurance required under the Act or under this part.

§ 1321.79 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.81 How the State may appeal.

A State may appeal the final decision of the Commissioner disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State shall file the appeal within 30 days of the Commissioner's final decision.

§ 1321.83 How the Commissioner may reallot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

PART 1322—GRANTS TO INDIAN TRIBES FOR SUPPORT AND NUTRITION SERVICES

Sec.

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AUTHORITY: 42 U.S.C. 3001; Title VI, Part A of the Older Americans Act.

SOURCE: 53 FR 33774, Aug. 31, 1988, unless otherwise noted. Redesignated and amended at 81 FR 35645, June 3, 2016.

§ 1322.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of American Indian elders on Indian reservations. This part implements title VI (part A) of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization shall meet in order to receive a grant to promote the delivery of services for older Indians that are comparable to services provided under Title III. This part also

prescribes application and hearing requirements and procedures for these grants.

§ 1322.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in §1322.19, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Indian reservation, means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688).

Indian tribe, means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

Means test, as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person's receipt of services under this part.

Older Indians, means those individuals who have attained the minimum age determined by the tribe for services.

Project period, as used in §1322.19, means the total time for which a project is approved for support, including any extensions.

Service area, as used in §1322.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation or any portion of a county or counties which has a common boundary with the reservation. A service area may also include a noncontiguous area if the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

Service provider, means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

Tribal organization, as used in §1322.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§ 1322.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) [Reserved]

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and Procedure for Hearings under part 80 of this Title;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

[53 FR 33774, Aug. 31, 1988, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1322.7 Confidentiality and disclosure of information.

A tribal organization shall have confidentiality and disclosure procedures as follows:

(a) A tribal organization shall have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1322.9 Contributions.

(a) Each tribal organization shall:

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all services contributions to expand comprehensive and coordinated services systems supported under this part, while using nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization shall consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1322.11 Prohibition against supplantation.

A tribal organization shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1322.13 Supportive services.

(a) A tribal organization may provide any of the supportive services mentioned under title III of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The tribal organization shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior centers assisted

under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it shall substantially comply with the requirements in §1321.71 and legal services providers shall comply fully with the requirements in §§1321.71(c) through 1321.71(p).

§ 1322.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may:

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to nonelderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each tribal organization may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the tribal organization shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the tribal organization shall work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1322.17 Access to information.

A tribal organization shall:

(a) Establish or have a list of all services that are available to older Indians in the service area,

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1322.19 Application requirements.

A tribal organization shall have an approved application. The application shall be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization:

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in §1322.7 through 1322.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1322.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuaton, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1322.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond with 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designated official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissoner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

PART 1323—GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER HAWAIIAN NATIVES

Sec.

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1323.3 Definitions.
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1323.21 Application approval.
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AUTHORITY: 42 U.S.C. 3001; Title VI Part B of the Older Americans Act.

SOURCE: 53 FR 33777, Aug. 31, 1988, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35646, June 3, 2016

§ 1323.1 Basis and purpose of this part.

This program was established to meet the unique needs and circumstances of Older Hawaiian Natives. This part implements title VI (part B) of the Older Americans Act, as amended, by establishing the requirements that a public or nonprofit private organization shall meet in order to receive a grant to promote the delivery of services for older Hawaiian Natives that are comparable to services provided under title III. This part also prescribes application and hearing requirements and procedures for these agrants.

§ 1323.3 Definitions.

Acquiring, as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease of 10 years or more for use as a multipurpose senior center.

Act, means the Older Americans Act of 1965, as amended.

Altering or *renovating*, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

Budgeting period, as used in §1323.19, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

Constructing, as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modificaitons to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Department, means the Department of Health and Human Services.

Eligible organization, means a public or nonprofit private organization having the capacity to provide services under this part for older Hawaiian Natives.

Grantee, as used in this part, means an eligible organization that has received funds to provide services to older Hawaiians.

Hawaiian Native, as used in this part, means any individual any of whose ancestors were native of the area which consists of the Hawaiian Islands prior to 1778.

Means test, as used in the provision of services, means the use of an older Hawaiian Native's income or resources to deny or limit that person receipt of services under this part.

Older Hawaiian, means any individual, age 60 or over, who is an Hawaiian Native.

Project period, as used in §1323.19, means the total time for which a project is approved for support, including any extensions.

Service area, as used in §1323.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the grantee provides supportive and nutritional services to older Hawaiian Natives residing there.

§ 1323.5 Applicability of other regulations.

The following regulations in title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16-Procedures of the Departmental Grant Appeals Board;

(b) [Reserved]

(c) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(d) Part 80-Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964;

(e) Part 81-Practice and procedures for hearings under part 80;

(f) Part 84-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financing Participation; and

(g) Part 91-Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

[53 FR 33777, Aug. 31, 1988, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1323.7 Confidentiality and disclosure of information.

A grantee shall have confidentiality and disclosure procedures as follows:

(a) The grantee shall have procedures to ensure that no information about an older Hawaiian Native or obtained from an older Hawaiian Native is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal monitoring agencies.

(b) A grantee is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1323.9 Contributions.

(a) Each grantee shall:

(1) Provide each older Hawaiian Native with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Hawaiian Native with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each grantee may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the grantee shall consider the income ranges of older Hawaiian Natives in the service area and the grantee's other sources of income. However, means tests may not be used.

(c) A grantee may not deny any older Hawaiian a service because the older Hawaiian will not or cannot contribute to the cost of the service.

§ 1323.11 Prohibition against supplantation.

A grantee shall ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1323.13 Supportive services.

(a) A grantee may provide any of the supportive services specified under title III of the Older Americans Act and any other supportive services, approved in the grantee's application, that are necessary for the general welfare of older Hawaiian Natives.

(b) If a grantee elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it shall comply with the following requirements:

(1) The grantee shall comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The grantee shall assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The grantee shall assure technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If a grantee elects to provide legal services, it shall substantially comply with the requirements in § 1321.71 and legal services providers shall comply fully with the requirements in §§ 1321.71(c) through 1321.71(p).

§ 1323.15 Nutrition services.

(a) In addition to providing nutrition services to older Hawaiian Natives, a grantee may:

(1) Provide nutrition services to the spouses of older Hawaiian Natives;

(2) Provide nutrition services to nonelderly handicapped or disabled Hawaiian Natives who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided;

(3) Offer a meal, on the same basis as meals are provided to older Hawaiian Natives, to individuals providing volunteer services during meal hours; and

(4) Provide a meal to individuals with disabilities who reside in a non-institutional household with and accompany a person eligible for congregate meals under that part.

(b) Each grantee may receive cash payments in lieu of donated foods for all or any portion of its funding available under section 311(a)(4) of the Act. To receive cash or commodities, the grantee shall have an agreement with the U.S. Department of Agriculture's Food and Nutrition Service (FNS) to be a distributing agency.

(c) Where applicable, the grantee shall work with agencies responsible for administering other programs to facilitate participation of older Hawaiian Natives.

§ 1323.17 Access to information.

A grantee shall:

(a) Establish or have a list of all services that are available to older Hawaiian Natives in the service area;

(b) Maintain a list of services needed or requested by the older Hawaiians; and

(c) Provide assistance to older Hawaiian Natives to help them take advantage of available services.

§ 1323.19 Application requirements.

To receive funds under this part, an eligible organization shall submit an application as prescribed in section 623 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application shall provide for:

(a) Program objectives, as set forth in section 623(a)(6) of the Act, and any objectives established by the Commissioner;

(b) A description of the geographic boundaries of the service area proposed by the eligible organization;

(c) Documentation of the organization's ability to serve older Hawaiian Natives;

(d) Assurances as prescribed by the Commissioner that:

(1) The eligible organization represents at least 50 older Hawaiian Natives who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities on behalf of older Hawaiian natives in close coordination with the State agency and Area Agency on Aging:

(3) The eligible organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in §§ 1323.7 through 1323.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

(e) Signature by the principal official of the eligible organization.

§ 1323.21 Application approval.

(a) Approval of any application under section 623(d) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved application or portion thereof.

(b) The Commissioner may give first priority in awarding grants to eligible applicant organizations that have prior experience in serving Hawaiian Natives, particularly older Hawaiian Natives.

§ 1323.23 Hearing procedures.

In accordance with section 623(c)(3) of the Act, if the Commissioner disapproves an application from an eligible organization, the organization may file a written request for a hearing with the Commissioner.

(a) The request shall be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the organization shall submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request shall also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging shall have the opportunity to respond

within 30 days to the merits of the organization's request.

(c) The Commissioner notifies the organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the organization to:

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or the Commissioner's designee decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or the Commissioner's designee decides.

(e) The Commissioner or the Commissioner's designee conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or the Commissioner's designee issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the organization.

(i) Either the organization or the staff of the Administration on Aging may request, for good cause, an extension of any of the time limits specified in this section.

PART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subpart A—State Long-Term Care Ombudsman Program

Sec.

1324.1 Definitions.
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1324.19 Duties of the representatives of the Office.
1324.21 Conflicts of interest.

Subpart B [Reserved]

AUTHORITY: 42 U.S.C. 3001 et seq.

SOURCE: 80 FR 7758, Feb. 11, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35646, June 3, 2016

Subpart A—State Long-Term Care Ombudsman Program

§ 1324.1 Definitions.

The following definitions apply to this part:

Immediate family, pertaining to conflicts of interest as used in section 712 of the Act, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the organizational unit in a State or territory which is headed by a State Long-Term Care Ombudsman.

Representatives of the Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act, means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in §1324.19(a), whether personnel supervision is provided by the Ombudsman or his or her designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act.

Resident representative means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications;

(3) Legal representative, as used in section 712 of the Act; or

(4) The court-appointed guardian or conservator of a resident.

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

State Long-Term Care Ombudsman, or Ombudsman, as used in sections 711 and 712 of the Act, means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19.

State Long-Term Care Ombudsman program, Ombudsman program, or program, as used in sections 711 and 712 of the Act, means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

Willful interference means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any of the functions or responsibilities set forth in § 1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in § 1324.19.

§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(a) The Office of the State Long-Term Care Ombudsman shall be an entity which shall be headed by the State Long-Term Care Ombudsman, who shall carry out all of the functions and responsibilities set forth in § 1324.13 and shall carry out, directly and/or through local Ombudsman entities, the duties set forth in § 1324.19.

(b) The State agency shall establish the Office and, thereby carry out the Long-Term Care Ombudsman program in any of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency shall require that the Ombudsman serve on a full-time basis. In providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in §§ 1324.13 and 1324.19 are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(1) This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

(2) [Reserved]

(d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications which shall include, but not be limited to, demonstrated expertise in:

(1) Long-term services and supports or other direct services for older persons or individuals with disabilities;

(2) Consumer-oriented public policy advocacy;

(3) Leadership and program management skills; and

(4) Negotiation and problem resolution skills.

(e) *Policies and procedures.* Where the Ombudsman has the legal authority to do so, he or she shall establish policies and procedures, in consultation with the State agency, to carry out the Ombudsman program in accordance with the Act. Where State law does not provide the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures. Where local Ombudsman entities are designated within area agencies on aging or other entities, the Ombudsman and/or appropriate agency shall develop such policies and procedures in consultation with the agencies hosting local Ombudsman entities and with representatives of the Office. The policies and procedures must address the matters within this subsection.

(1) *Program administration.* Policies and procedures regarding program administration must include, but not be limited to:

(i) A requirement that the agency in which the Office is organizationally located must not have personnel policies or practices which prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in §1324.13, or from adhering to the requirements of section 712 of the Act. Nothing in this provision shall prohibit such agency from requiring that the Ombudsman, or other employees or volunteers of the Office, adhere to the personnel policies and procedures of the entity which are otherwise lawful.

(ii) A requirement that an agency hosting a local Ombudsman entity must not have personnel policies or practices which prohibit a representative of the Office from performing the duties of the Ombudsman program or from adhering to the requirements of section 712 of the Act. Nothing in this provision shall prohibit such agency from requiring that representatives of the Office adhere to the personnel policies and procedures of the host agency which are otherwise lawful.

(iii) A requirement that the Ombudsman shall monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(iv) A description of the process by which the agencies hosting local Ombudsman entities will coordinate with the Ombudsman in the employment or appointment of representatives of the Office.

(v) Standards to assure prompt response to complaints by the Office and/or local Ombudsman entities which prioritize abuse, neglect, exploitation and time-sensitive complaints and which consider the severity of the risk to the resident, the imminence of the threat of harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

(vi) Procedures that clarify appropriate fiscal responsibilities of the local Ombudsman entity, including but not limited to clarifications regarding access to programmatic fiscal information by appropriate representatives of the Office.

(2) *Procedures for access.* Policies and procedures regarding timely access to facilities, residents, and appropriate records (regardless of format and including, upon request, copies of such records) by the Ombudsman and representatives of the Office must include, but not be limited to:

(i) Access to enter all long-term care facilities at any time during a facility's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(ii) Access to all residents to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iv) Access to review the medical, social and other records relating to a resident, if—

(A) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; and

(C) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman;

(v) Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(vi) Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

(3) *Disclosure.* Policies and procedures regarding disclosure of files, records and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by §1327.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by §1327.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order;

(iv) Exclusion of the Ombudsman and representatives of the Office from abuse reporting requirements, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in §1327.19(b)(5) through (8); and

(v) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(c) of the Act.

(4) *Conflicts of interest.* Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in §1324.21, including:

(i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman is subject to a conflict of interest;

(ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or representatives of the Office with a conflict that cannot be adequately removed or remedied;

(iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, which cannot be adequately removed or remedied;

(iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and

(v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

(5) *Systems advocacy.* Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(i) Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act.

(ii) Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

(6) *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and refuse, suspend or remove designation of local Ombudsman entities and representatives of the Office.

(i) Such criteria should include, but not be limited to, the authority to refuse, suspend or remove designation a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be adequately removed or remedied as set forth in §1327.21.

(ii) [Reserved]

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

(ii) [Reserved]

(8) *Determinations of the Office.* Policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, without necessarily representing the determinations or positions of the State agency or other agency in which the Office is organizationally located, regarding:

(i) Disclosure of information maintained by the Ombudsman program within the limitations set forth in section 712(d) of the Act;

(ii) Recommendations to changes in Federal, State and local laws, regulations, policies and actions pertaining to the health, safety, welfare, and rights of residents; and

(iii) Provision of information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) *Functions.* The Ombudsman shall, personally or through representatives of the Office—

(1) Identify, investigate, and resolve complaints that—

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of—

(A) Providers, or representatives of providers, of long-term care;

(B) Public agencies; or

(C) Health and social service agencies.

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office; and

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns.

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes of regulations and policies to government agencies by the Ombudsman or representatives of the Office do not constitute

lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents; and

(b) The Ombudsman shall be the head of a unified statewide program and shall:

(1) Establish or recommend policies, procedures and standards for administration of the Ombudsman program pursuant to § 1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in § 1324.19 in accordance with Ombudsman program policies and procedures.

(c) *Designation.* The Ombudsman shall determine designation, and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act and the policies and procedures set forth in § 1324.11(e)(6).

(1) Where an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

(2) *Training requirements.* The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that—

(i) Specify a minimum number of hours of initial training;

(ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate; and

(iii) Specify an annual number of hours of in-service training for all representatives of the Office;

(3) Prohibit any representative of the Office from carrying out the duties described in § 1324.19 unless the representative—

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;

(4) The Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the local Ombudsman entity and/or the local Ombudsman entity.

(5) Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and/or the local Ombudsman entity.

(d) *Ombudsman program information.* The Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other

information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements.

(e) *Disclosure.* In making determinations regarding the disclosure of files, records and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act in responding to requests for disclosure of files, records, and other information, regardless of the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

(2) Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records or other information of the Office; and

(3) Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:

(i) Classification of at least the following types of files, records, and information: medical, social and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system; and

(ii) Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in paragraph (e) of this section.

(f) *Fiscal management.* The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.

(g) *Annual report.* The Ombudsman shall independently develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and as otherwise required by the Assistant Secretary.

(1) Such report shall:

(i) Describe the activities carried out by the Office in the year for which the report is prepared;

(ii) Contain analysis of Ombudsman program data;

(iii) Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of, assisted living, board and care facilities and other similar adult care facilities; and

(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.

(h) Through adoption of memoranda of understanding and other means, the Ombudsman shall lead state-level coordination, and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being or rights of residents of long-term care facilities including, but not limited to:

(1) Area agency on aging programs;
(2) Aging and disability resource centers;
(3) Adult protective services programs;
(4) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
(5) Facility and long-term care provider licensure and certification programs;
(6) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
(7) Victim assistance programs;
(8) State and local law enforcement agencies;
(9) Courts of competent jurisdiction; and
(10) The State legal assistance developer and legal assistance programs, including those provided under section 306(a)(2)(C) of the Act.

(i) The Ombudsman shall carry out such other activities as the Assistant Secretary determines to be appropriate.

§ 1324.15 State agency responsibilities related to the Ombudsman program.

(a) In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies with the relevant provisions of the Act and of this rule.

(b) The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) The State agency shall provide monitoring, as required by § 1321.11(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19. The State agency may make reasonable requests of reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) The State agency shall ensure that any review of files, records or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§ 1324.11(e)(3) and 1327.13(e).

(g) The State agency shall integrate the goals and objectives of the Office into the State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act, to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with, the activities of other programs authorized by Title VII of the Act as well as other State and local entities with responsibilities relevant to the health, safety, well-being or rights of older adults, including residents of long-term care facilities as set forth in § 1324.13(h).

(i) *Interference, retaliation and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation and reprisals:

(i) by a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) by a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, has competencies relevant to the legal needs of the program and of residents, and is without conflict of interest (as defined by the State ethical standards governing the legal profession), in order to—

(A) Provide consultation and representation as needed in order for the Ombudsman program to protect the health, safety, welfare, and rights of residents; and

(B) Provide consultation and/or representation as needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including, but not limited to, complaint resolution and systems advocacy;

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the legal services developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents; and

(iii) Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). However, at a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and legal counsel are subject to attorney-client privilege.

(k) The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act and §1327.13(g) and as otherwise required by the Assistant Secretary.

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns; and

(4) Establish procedures for the training of the representatives of the Office, as set forth in §1327.13(c)(2).

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in §1324.13(h).

§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality and disclosure requirements of section 712 of the Act, as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

§ 1324.19 Duties of the representatives of the Office.

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(2) Provide services to protect the health, safety, welfare, and rights of residents;

(3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints;

(4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions;

(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate.

(b) *Complaint processing.* (1) With respect to identifying, investigating and resolving complaints, and regardless of the source of the complaint (*i.e.* complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate and resolve a complaint impacting multiple residents or all residents of a facility.

(2) Regardless of the source of the complaint (*i.e.* the complainant), including when the source is the Ombudsman or representative of the Office, the

Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

(i) The Ombudsman or representative of Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints.

(ii) The Ombudsman or representative of the Office shall personally discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:

(A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;

(B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;

(C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;

(D) Advise the resident (and resident representative, where applicable) of the resident's rights;

(E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;

(F) Investigate the complaint to determine whether the complaint can be verified; and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(iv) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act and the procedures set forth in §1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide

information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office;

(5) For purposes of paragraphs (b)(1) paragraph (3) of this section, if a resident is unable to communicate his or her informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication of informed consent and/or perspective regarding the resolution of the complaint of a resident representative so long as the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1327.11(e)(3), shall provide that the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;

(ii) The resident has no resident representative;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction or decision may adversely affect the health, safety, welfare, or rights of the resident;

(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(vi) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1327.11(e)(3), shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and has no resident representative, or the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;

(ii) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(iv) The representative of the Ombudsman obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by §1327.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies;

(i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth paragraphs (b)(1) through (3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(iii) In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident-identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

(i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.

§1324.21 Conflicts of interest.

The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider the organizational

conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

(1) Is responsible for licensing, surveying, or certifying long-term care facilities;

(2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

(3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;

(4) Has governing board members with any ownership, investment or employment interest in long-term care facilities;

(5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

(6) Provides long-term care coordination or case management for residents of long-term care facilities;

(7) Sets reimbursement rates for long-term care facilities;

(8) Provides adult protective services;

(9) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

(10) Conducts preadmission screening for long-term care facility placements;

(11) Makes decisions regarding admission or discharge of individuals to orfrom long-term care facilities; or

(12) Provides guardianship, conservatorship or other fiduciary or surrogatedecision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency and the Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

(i) Take reasonable steps to avoid internal conflicts of interest;

(ii) Establish a process for review and identification of internal conflicts;

(iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual, involved in the designating, appointing, otherwise selecting or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary through the National Ombudsman Reporting System.

(3) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act. The State agency may not enter into a contract or other arrangement to carry out the Ombudsman program if the other entity, and may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(iii) Has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

(4) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act, the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;

(ii) Establish a process for periodic review and identification of conflicts;

(iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;

(iv) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest, and

(B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

(5) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization. The State agency shall not enter into such contract or other arrangement with an agency or organization which is responsible for licensing or certifying long-term care facilities in the state or is an association (or affiliate of such an association) of long-term care facilities.

(6) Where local Ombudsman entities provide Ombudsman services, the Ombudsman shall:

(i) Prior to designating or renewing designation, take reasonable steps to avoid conflicts of interest in any agency which may host a local Ombudsman entity.

(ii) Establish a process for periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity,

(iii) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the Ombudsman,

(iv) Establish criteria for approval of steps taken to remedy or remove conflicts in such agencies, and

(v) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts with the local Ombudsman entity in such agencies.

(7) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension or removal of designation of the local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act, the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

(i) Direct involvement in the licensing or certification of a long-term care facility;

(ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility;

(iii) Employment of an individual by, or participation in the management of, a long-term care facility in the service area or by the owner or operator of any long-term care facility in the service area;

(iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is

a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);

(vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services; and

(viii) Serving residents of a facility in which an immediate family member resides.

(d) *Removing or remedying individual conflicts.* (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to §1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in §1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

(2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:

(i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;

(ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;

(iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office, and

(iv) Take steps to remove or remedy conflicts.

(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iv) Is employed by, or participating in the management of, a long-term care facility.

(A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participating in the management of a long-term care facility within the previous twelve months.

(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

Subpart B [Reserved]

PART 1325—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

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1325.9 Grants administration requirements.

AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35646, June 3, 2016

§ 1325.1 General.

Except as specified in § 1325.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Councils on Developmental Disabilities;

(b) Protection and Advocacy for Individuals with Developmental Disabilities;

(c) Projects of National Significance; and

(d) National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

§ 1325.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*).

§ 1325.3 Definitions.

For the purposes of parts 1325 through 1328 of this chapter, the following definitions apply:

ACL. The term ''ACL'' means the Administration for Community Living within the U.S. Department of Health and Human Services.

Act. The term ''Act'' means the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) (42 U.S.C. 15001 *et seq.*).

Accessibility. The term ''Accessibility'' means that programs funded under the DD Act of 2000 and facilities which are used in those programs meet applicable requirements of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), its implementing regulation, 45 CFR part 84, the Americans with Disabilities Act of 1990, as amended , Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), and its implementing regulation, 45 CFR part 80.

(1) For programs funded under the DD Act of 2000, information shall be provided to applicants and program participants in plain language and in a manner that is accessible and timely to:

(i) Individuals with disabilities, including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual; and

(ii) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including:

(A) Oral interpretation;

(B) Written translations; and

(C) Taglines in non-English languages indicating the availability of language services.

AIDD. The term ''AIDD'' means the Administration on Intellectual and Developmental Disabilities, within the Administration for Community Living at the U.S. Department of Health and Human Services.

Advocacy activities. The term ''advocacy activities'' means active support of policies and practices that promote systems change efforts and other activities that further advance self-determination and inclusion in all aspects of community living (including housing, education, employment, and other aspects) for individuals with developmental disabilities, and their families.

Areas of emphasis. The term ''areas of emphasis'' means the areas related to quality assurance activities, education activities and early intervention activities, child care-related activities, health-related activities, employment-related activities, housing-related activities, transportation-related activities, recreation-related activities, and other services available or offered to individuals in a community, including formal and informal community supports that affect their quality of life.

Assistive technology device. The term ''assistive technology device'' means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

Assistive technology service. The term ''assistive technology service'' means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes: Conducting an evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual's customary environment; purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device by an individual with a developmental disability; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing an assistive technology device; coordinating and using another therapy, intervention, or service with an assistive technology device, such as a therapy, intervention, or service associated with an education or rehabilitation plan or program; providing training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

Capacity building activities. The term ''capacity building activities'' means activities (*e.g.* training and technical assistance) that expand and/or improve the ability of individuals with developmental disabilities, families, supports, services and/or systems to promote, support and enhance self-determination, independence, productivity and inclusion in community life.

Center. The term ''Center'' means a University Center for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD) established under subtitle D of the Act.

Child care-related activities. The term ''child care-related activities'' means advocacy, capacity building, and systemic change activities that result in families of children with developmental disabilities having access to and use of child care services, including before-school, after-school, and out-of-school services, in their communities.

Culturally competent. The term ''culturally competent,'' used with respect to services, supports, and other assistance means that services, supports, or other assistance that are conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.

Department. The term ''Department'' means the U.S. Department of Health and Human Services.

Developmental disability. The term ''developmental disability'' means a severe, chronic disability of an individual that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(vi) Self-direction;

(vii) Capacity for independent living; and

(viii) Economic self-sufficiency.

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(6) An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1) through (5) of this definition, if the individual, without services and supports, has a high probability of meeting those criteria later in life.

Early intervention activities. The term ''early intervention activities'' means advocacy, capacity building, and systemic change activities provided to infants and young children described in the definition of ''developmental disability'' and their families to enhance the development of the individuals to maximize their potential, and the capacity of families to meet the special needs of the individuals.

Education activities. The term ''education activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities being able to access appropriate supports and modifications when necessary, to maximize their educational potential, to benefit from lifelong educational activities, and to be integrated and included in all facets of student life.

Employment-related activities. The term ''employment-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in a community.

Family support services. The term ''family support services'' means services, supports, and other assistance, provided to families with a member or members who have developmental disabilities, that are designed to: Strengthen the family's role as primary caregiver; prevent inappropriate out-of-the-home placement of the members and maintain family unity; and reunite, whenever possible, families with members who have been placed out of the home. This term includes respite care, provision of rehabilitation technology and assistive technology, personal assistance services, parent training and counseling, support for families headed by aging caregivers, vehicular and home modifications, and assistance with extraordinary expenses associated with the needs of individuals with developmental disabilities.

Fiscal year. The term ''fiscal year'' means the Federal fiscal year unless otherwise specified.

Governor. The term ''Governor'' means the chief executive officer of a State, as that term is defined in the Act, or his or her designee who has been formally designated to act for the Governor in carrying out the requirements of the Act and the regulations.

Health-related activities. The term ''health-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of coordinated health, dental, mental health, and other human and social services, including prevention activities, in their communities.

Housing-related activities. The term ''housing-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of housing and housing supports and services in their communities, including assistance related to renting, owning, or modifying an apartment or home.

Inclusion. The term ''inclusion'', used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enable individuals with developmental disabilities to have friendships and relationships with individuals and families of their own choice; live in homes close to community resources, with regular contact with individuals without disabilities in their communities; enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; and take full advantage of

their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

Individualized supports. The term ''individualized supports'' means supports that: Enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life; designed to enable such individual to control such individual's environment, permitting the most independent life possible; and prevent placement into a more restrictive living arrangement than is necessary and enable such individual to live, learn, work, and enjoy life in the community; and include early intervention services, respite care, personal assistance services, family support services, supported employment services support services for families headed by aging caregivers of individuals with developmental disabilities, and provision of rehabilitation technology and assistive technology, and assistive technology services.

Integration. The term ''integration,'' means exercising the equal rights of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

Not-for-profit. The term ''not-for-profit,'' used with respect to an agency, institution or organization, means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which injures, or may lawfully inure, to the benefit of any private shareholder or individual.

Personal assistance services. The term ''personal assistance services'' means a range of services provided by one or more individuals designed to assist an individual with a disability to perform daily activities, including activities on or off a job, that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual's control in life and ability to perform everyday activities, including activities on or off a job.

Prevention activities. The term ''prevention activities'' means activities that address the causes of developmental disabilities and the exacerbation of functional limitation, such as activities that: Eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities; increase the early identification of problems to eliminate circumstances that create or increase functional limitations; and mitigate against the effects of developmental disabilities throughout the lifespan of an individual.

Productivity. The term ''productivity'' means engagement in income-producing work that is measured by increased income, improved employment status, or job advancement, or engagement in work that contributes to a household or community.

Protection and Advocacy (P&A) Agency. The term ''Protection and Advocacy (P&A) Agency'' means a protection and advocacy system established in accordance with section 143 of the Act.

Quality assurance activities. The term ''quality assurance activities'' means advocacy, capacity building, and systemic change activities that result in improved consumer and family-centered quality assurance and that result in systems of quality assurance and consumer protection that include monitoring of services, supports, and assistance provided to an individual with developmental disabilities that ensures that the individual will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and will not be subject to the inappropriate use of restraints or seclusion; include training in leadership, self-advocacy, and self-determination for individuals with developmental disabilities, their families, and their guardians to ensure that those individuals will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and will not be subject to the inappropriate use of restraints or seclusion; or

include activities related to interagency coordination and systems integration that result in improved and enhanced services, supports, and other assistance that contribute to and protect the self-determination, independence, productivity, and integration and inclusion in all facets of community life of individuals with developmental disabilities.

Rehabilitation technology. The term ''rehabilitation technology'' means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, and the provision of assistive technology devices and assistive technology services.

Required planning documents. The term ''required planning documents'' means the State plans required by §1326.30 of this chapter for the State Council on Developmental Disabilities, the Annual Statement of Goals and Priorities required by §1326.22(c) of this chapter for P&As, and the five-year plan and annual report required by §1328.7 of this chapter for UCEDDs.

Secretary. The term ''Secretary'' means the Secretary of the U.S. Department of Health and Human Services.

Self-determination activities. The term ''self-determination activities'' means activities that result in individuals with developmental disabilities, with appropriate assistance, having the ability and opportunity to communicate and make personal decisions; the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive; the authority to control resources to obtain needed services, supports, and other assistance; opportunities to participate in, and contribute to, their communities; and support, including financial support, to advocate for themselves and others to develop leadership skills through training in self-advocacy to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.

State. The term ''State'':

(1) Except as applied to the University Centers of Excellence in Developmental Disabilities Education, Research and Service in section 155 of the Act, includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) For the purpose of UCEDDs in section 155 of the Act and part 1388 of this chapter, ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

State Council on Developmental Disabilities (SCDD). The term ''State Council on Developmental Disabilities (SCDD)'' means a Council established under section 125 of the DD Act.

Supported employment services. The term ''supported employment services'' means services that enable individuals with developmental disabilities to perform competitive work in integrated work settings, in the case of individuals with developmental disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of significant disabilities; and who, because of the nature and severity of their disabilities, need intensive supported employment services or extended services in order to perform such work.

Systemic change activities. The term ''systemic change activities'' means a sustainable, transferable and replicable change in some aspect of service or support availability, design or delivery that promotes positive or meaningful outcomes for individuals with developmental disabilities and their families.

Transportation-related activities. The term ''transportation-related activities'' means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of transportation.

UCEDD. The term ''UCEDD'' means University Centers for Excellence in Developmental Disabilities Education, Research, and Service, also known by the term ''Center'' under section 102(5) of the Act.

Unserved and underserved. The term ''unserved and underserved'' includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals who require assistive technology in order to participate in community life.

§ 1325.4 Rights of individuals with developmental disabilities.

(a) Section 109 of the Act, Rights of Individuals with Developmental Disabilities (42 U.S.C. 15009), is applicable to the SCDD.

(b) In order to comply with section 124(c)(5)(H) of the Act (42 U.S.C. 15024(c)(5)(H)), regarding the rights of individuals with developmental disabilities, the State participating in the SCDD program must meet the requirements of 45 CFR 1386.30(f).

(c) Applications from UCEDDs also must contain an assurance that the human rights of individuals assisted by this program will be protected consistent with section 101(c) (see section 154(a)(3)(D) of the Act).

§ 1325.5 [Reserved]

§ 1325.6 Employment of individuals with disabilities.

Each grantee which receives Federal funding under the Act must meet the requirements of section 107 of the Act (42 U.S.C. 15007) regarding affirmative action. The grantee must take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such: Advertising, recruitment, employment, rates of pay or other forms of compensation, selection for training, including apprenticeship, upgrading, demotion or transfer, and layoff or termination. This obligation is in addition to the requirements of 45 CFR part 84, subpart B, prohibiting discrimination in employment practices on the basis of disability in programs receiving assistance from the Department. Recipients of funds under the Act also may be bound by the provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 42 U.S.C. 12101 *et seq*.) with respect to employment of individuals with disabilities. Failure to comply with section 107 of the Act may result in loss of Federal funds under the Act. If a compliance action is taken, the State will be given reasonable notice and an opportunity for a hearing as provided in subpart E of 45 CFR part 1326.

§ 1325.7 Reports to the Secretary.

All grantee submission of plans, applications and reports must label goals, activities and results clearly in terms of the following: Area of emphasis, type of activity (advocacy, capacity building, systemic change), and categories of measures of progress.

§ 1325.8 Formula for determining allotments.

The Secretary, or his or her designee, will allocate funds appropriated under the Act for the State Councils on Developmental Disabilities and the P&As as directed in sections 122 and 142 of the Act (42 U.S.C. 15022 and 15042).

§ 1325.9 Grants administration requirements.

(a) The following parts of this title and title 2 CFR apply to grants funded under parts 1326 and 1328 of this chapter, and to grants for Projects of National Significance under section 162 of the Act (42 U.S.C. 15082):

(1) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(2) 45 CFR part 46—Protection of Human Subjects.

(3) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Award.

(4) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(5) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal

Assistance through the Department of Health and Human Services Effectuation of title VI of the Civil Rights Act of 1964.

(5) 45 CFR part 81—Practice and Procedure for Hearings under part 80 of this title.

(6) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(7) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving Federal Financial Assistance.

(8) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(9) 45 CFR part 93—New Restrictions on Lobbying.

(b) The Departmental Appeals Board also has jurisdiction over appeals by any grantee that has received grants under the UCEDD programs or for Projects of National Significance. The scope of the Board's jurisdiction concerning these appeals is described in 45 CFR part 16.

(c) The Departmental Appeals Board also has jurisdiction to decide appeals brought by the States concerning any disallowances taken by the Secretary, or his or her designee, with respect to specific expenditures incurred by the States or by contractors or sub grantees of States. This jurisdiction relates to funds provided under the two formula programs—subtitle B of the Act—Federal Assistance to State Councils on Developmental Disabilities, and subtitle C of the Act—Protection and Advocacy for Individuals with Developmental Disabilities. Appeals filed by States shall be decided in accordance with 45 CFR part 16.

(d) In making audits and examination to any books, documents, papers, and transcripts of records of SCDDs, the P&As, the UCEDDs and the Projects of National Significance grantees and sub grantees, as provided for in 45 CFR part 75, the Department will keep information about individual clients confidential to the maximum extent permitted by law and regulations.

(e)(1) The Department or other authorized Federal officials may access client and case eligibility records or other records of a P&A system for audit purposes, and for purposes of monitoring system compliance pursuant to section 103(b) of the Act. However, such information will be limited pursuant to section 144(c) of the Act. No personal identifying information such as name, address, and social security number will be obtained. Only eligibility information will be obtained regarding the type and level of disability of individuals being served by the P&A and the nature of the issue concerning which the system represented an individual.

(2) Notwithstanding paragraph (e)(1) of this section, if an audit, monitoring review, evaluation, or other investigation by the Department produces evidence that the system has violated the Act or the regulations, the system will bear the burden of proving its compliance. The system's inability to establish compliance because of the confidentiality of records will not relieve it of this responsibility. The P&A may elect to obtain a release regarding personal information and privacy from all individuals requesting or receiving services at the time of intake or application. The release shall state that only information directly related to client and case eligibility will be subject to disclosure to officials of the Department.

PART 1326—FORMULA GRANT PROGRAMS

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AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35647, June 3, 2016.

Subpart A—Basic Requirements

§ 1326.1 General.

All rules under this subpart are applicable to both the State Councils on Developmental Disabilities and the agency designated as the State Protection and Advocacy (P&As) System.

§ 1326.2 Obligation of funds.

(a) Funds which the Federal Government allots under this part during a Federal fiscal year are available for obligation by States for a two-year period beginning with the first day of the Federal fiscal year in which the grant is awarded.

(b)(1) A State incurs an obligation for acquisition of personal property or for the performance of work on the date it makes a binding, legally enforceable, written commitment, or when the State Council on Developmental Disabilities enters into an Interagency Agreement with an agency of State government for acquisition of personal property or for the performance of work.

(2) A State incurs an obligation for personal services, for services performed by public utilities, for travel or for rental of real or personal property on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(c)(1) A Protection & Advocacy System may elect to treat entry of an appearance in judicial and administrative proceedings on behalf of an individual with a developmental disability as a basis for obligating funds for the litigation costs. The amount of the funds obligated must not exceed a reasonable estimate of the costs, and the way the estimate was calculated must be documented.

(2) For the purpose of this paragraph (c), *litigation costs* means expenses for court costs, depositions, expert witness fees, travel in connection with a case and similar costs, and costs resulting

from litigation in which the agency has represented an individual with developmental disabilities (*e.g.*, monitoring court orders, consent decrees), but not for salaries of employees of the P&A. All funds made available for Federal assistance to State Councils on Developmental Disabilities and to the P&As obligated under this paragraph (c) are subject to the requirement of paragraph (a) of this section. These funds, if reobligated, may be reobligated only within a two-year period beginning with the first day of the Federal fiscal year in which the funds were originally awarded.

§ 1326.3 Liquidation of obligations.

(a) All obligations incurred pursuant to a grant made under the Act for a specific Federal fiscal year, must be liquidated within two years of the close of the Federal fiscal year in which the grant was awarded.

(b) The Secretary, or his or her designee, may waive the requirements of paragraph (a) of this section when State law impedes implementation or the amount of obligated funds to be liquidated is in dispute.

(c) Funds attributable to obligations which are not liquidated in accordance with the provisions of this section revert to the Federal Government.

§ 1326.4 [Reserved]

Subpart B—Protection and Advocacy for Individuals With Developmental Disabilities (PADD)

§ 1326.19 Definitions.

As used in this subpart and subpart C of this part, the following definitions apply:

Abuse. The term ''abuse'' means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes but is not limited to such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations, or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue. In addition, the P&A may determine, in its discretion that a violation of an individual's legal rights amounts to abuse, such as if an individual is subject to significant financial exploitation.

American Indian Consortium. The term ''American Indian Consortium'' means any confederation of 2 or more recognized American Indian Tribes, created through the official resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in two or more States.

Complaint. The term ''complaint'' includes, but is not limited to, any report or communication, whether formal or informal, written or oral, received by the P&A system, including media accounts, newspaper articles, electronic communications, telephone calls (including anonymous calls) from any source alleging abuse or neglect of an individual with a developmental disability.

Designating official. The term ''designating official'' means the Governor or other State official, who is empowered by the State legislature or Governor to designate the State official or public or private agency to be accountable for the proper use of funds by and conduct of the agency designated to administer the P&A system.

Full investigation. The term ''full investigation'' means access to service providers, individuals with developmental disabilities and records authorized under these regulations, that are necessary for a P&A system to make a determination about whether alleged or suspected instances of abuse and neglect are taking place or have taken place. Full investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

Legal guardian, Conservator, and Legal representative. The terms ''legal guardian,'' ''conservator,'' and ''legal representative'' all mean a parent of a minor, unless the State has appointed

another legal guardian under applicable State law, or an individual appointed and regularly reviewed by a State court or agency empowered under State law to appoint and review such officers, and having authority to make all decisions on behalf of individuals with developmental disabilities. It does not include persons acting only as a representative payee, persons acting only to handle financial payments, executors and administrators of estates, attorneys or other persons acting on behalf of an individual with developmental disabilities only in individual legal matters, or officials or their designees responsible for the provision of services, supports, and other assistance to an individual with developmental disabilities.

Neglect. The term ''neglect'' means a negligent act or omission by an individual responsible for providing services, supports or other assistance which caused or may have caused injury or death to an individual with a developmental disability(ies) or which placed an individual with developmental disability(ies) at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; or provide a safe environment which also includes failure to maintain adequate numbers of trained staff or failure to take appropriate steps to prevent self-abuse, harassment, or assault by a peer.

Probable cause. The term ''probable cause'' means a reasonable ground for belief that an individual with developmental disability(ies) has been, or may be, subject to abuse or neglect, or that the health or safety of the individual is in serious and immediate jeopardy. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

State Protection and Advocacy System. The term ''State Protection and Advocacy System'' is synonymous with the term ''P&A'' used elsewhere in this regulation, and the terms ''System'' and ''Protection and Advocacy System'' used in this part and in subpart C of this part.

§ 1326.20 Agency designated as the State Protection and Advocacy System.

(a) The designating official must designate the State official or public or private agency to be accountable for proper use of funds and conduct of the Protection and Advocacy System.

(b) An agency of the State or private agency providing direct services, including guardianship services, may not be designated as the agency to administer the Protection and Advocacy System.

(c) In the event that an entity outside of the State government is designated to carry out the program, the designating official or entity must assign a responsible State official to receive, on behalf of the State, notices of disallowances and compliance actions as the State is accountable for the proper and appropriate expenditure of Federal funds.

(d)(1) Prior to any redesignation of the agency which administers and operates the State Protection and Advocacy System, the designating official must give written notice of the intention to make the redesignation to the agency currently administering and operating the State Protection and Advocacy System by registered or certified mail. The notice must indicate that the proposed redesignation is being made for good cause. The designating official also must publish a public notice of the proposed action. The agency and the public shall have a reasonable period of time, but not less than 45 days, to respond to the notice.

(2) The public notice must include:

(i) The Federal requirements for the State Protection and Advocacy System for individuals with developmental disabilities (section 143 of the Act); and where applicable, the requirements of other Federal advocacy programs administered by the State Protection and Advocacy System;

(ii) The goals and function of the State's Protection and Advocacy System including the current Statement of Goals and Priorities;

(iii) The name and address of the agency currently designated to administer and operate the State Protection and Advocacy System, and an indication of whether the agency also operates other Federal advocacy programs;

(iv) A description of the current agency operating and administering the Protection and Advocacy System including, as applicable, descriptions of other Federal advocacy programs it operates;

(v) A clear and detailed explanation of the good cause for the proposed redesignation;

(vi) A statement suggesting that interested persons may wish to write the current agency operating and administering the State Protection and Advocacy System at the address provided in paragraph (d)(2)(iii) of this section to obtain a copy of its response to the notice required by paragraph (d)(1) of this section. Copies must be in a format accessible to individuals with disabilities (including plain language), and language assistance services will be provided to individuals with limited English proficiency, such as translated materials or interpretation, upon request;

(vii) The name of the new agency proposed to administer and operate the State Protection and Advocacy System under the Developmental Disabilities Program. This agency will be eligible to administer other Federal advocacy programs;

(viii) A description of the system which the new agency would administer and operate, including a description of all other Federal advocacy programs the agency would operate;

(ix) The timetable for assumption of operations by the new agency and the estimated costs of any transfer and start-up operations; and

(x) A statement of assurance that the proposed new designated State Protection and Advocacy System will continue to serve existing clients and cases of the current P&A system or refer them to other sources of legal advocacy as appropriate, without disruption.

(3) The public notice as required by paragraph (d)(1) of this section, must be in a format accessible to individuals with disabilities, and language assistance services will be provided to individuals with limited English proficiency, such as translated materials or interpretation, upon request to individuals with developmental disabilities or their representatives. The designating official must provide for publication of the notice of the proposed redesignation using the State register, statewide newspapers, public service announcements on radio and television, or any other legally equivalent process. Copies of the notice must be made generally available to individuals with developmental disabilities and mental illness who live in residential facilities through posting or some other means.

(4) After the expiration of the public comment period required in paragraph (d)(1) of this section, the designating official must conduct a public hearing on the redesignation proposal. After consideration of all public and agency comments, the designating official must give notice of the final decision to the currently designated agency and the public through the same means used under paragraph (d)(3) of this section. This notice must include a clear and detailed explanation of the good cause finding. If the notice to the currently designated agency states that the redesignation will take place, it also must inform the agency of its right to appeal this decision to the Secretary, or his or her designee, the authority to hear appeals by the Secretary, or his or her designee, and provide a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments. The redesignation shall not be effective until 10 working days after notifying the current agency that administers and operates the State Protection and Advocacy System or, if the agency appeals, until the Secretary, or his or her designee, has considered the appeal.

(e)(1) Following notification as indicated in paragraph (d)(4) of this section, the agency that administers and

operates the State Protection and Advocacy System which is the subject of such action, may appeal the redesignation to the Secretary, or his or her designee. To do so, the agency that administers and operates the State Protection and Advocacy System must submit an appeal in writing to the Secretary, or his or her designee, within 20 days of receiving official notification under paragraph (d)(4) of this section, with a separate copy sent by registered of certified mail to the designating official who made the decision concerning redesignation.

(2) In the event that the agency subject to redesignation does exercise its right to appeal under paragraph (e)(1) of this section, the designating official must give public notice of the Secretary's, or his or her designated person's, final decision regarding the appeal through the same means utilized under paragraph (d)(3) of this section within 10 working days of receipt of the Secretary's, or his or her designee's, final decision under paragraph (e)(6) of this section.

(3) The designating official within 10 working days from the receipt of a copy of the appeal must provide written comments to the Secretary, or his or her designee, (with a copy sent by registered or certified mail to the Protection and Advocacy agency appealing under paragraph (e)(1) of this section), or withdraw the redesignation. The comments must include a summary of the public comments received in regard to the notice of intent to redesignate and the results of the public hearing and its responses to those comments.

(4) In the event that the designating official withdraws the redesignation while under appeal pursuant to paragraph (e)(1) of this section, the designating official must notify the Secretary, or his or her designee, and the current agency, and must give public notice of his or her decision through the same means utilized under paragraph (d)(3) of this section.

(5) As part of their submission under paragraph (e)(1) or (3) of this section, either party may request, and the Secretary, or his or her designee, may grant an opportunity for a meeting with the Secretary, or his or her designee, at which representatives of both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the designating official under paragraph (e)(2) of this section. The Secretary, or his or her designee, will promptly notify the parties of the date and place of the meeting.

(6) Within 30 days of the informal meeting under paragraph (e)(5) of this section, or, if there is no informal meeting under paragraph (e)(5) of this section, within 30 days of the submission under paragraph (e)(3) of this section, the Secretary, or his or her designee, will issue to the parties a final written decision on whether the redesignation was for good cause as defined in paragraph (d)(1) of this section. The Secretary, or his or her designee, will receive comments on the record from agencies administering the Federal advocacy programs that will be directly affected by the proposed redesignation. The P&A and the designating official will have an opportunity to comment on the submissions of the Federal advocacy programs. The Secretary, or his or her designee, shall consider the comments of the Federal programs, the P&A and the designating official in making his final decision on the appeal.

(f)(1) Within 30 days after the redesignation becomes effective under paragraph (d)(4) of this section, the designating official must submit an assurance to the Secretary, or his or her designee, that the newly designated agency that will administer and operate the State Protection and Advocacy System meets the requirements of the statute and the regulations.

(2) In the event that the agency administering and operating the State Protection and Advocacy System subject to redesignation does not exercise its rights to appeal within the period provided under paragraph (e)(1) of this section, the designating official must provide to the Secretary, or his or her designee, documentation that the agency was redesignated for good cause. Such documentation must clearly demonstrate that the Protection and Advocacy agency subject to redesignation was not redesignated for any actions or activities which were carried out under

section 143 of the Act, this regulation or any other Federal advocacy program's legislation or regulations.

§ 1326.21 Requirements and authority of the State Protection and Advocacy System.

(a) In order for a State to receive Federal funding for Protection and Advocacy activities under this subpart, as well as for the State Council on Developmental Disabilities activities (subpart D of this part), the Protection and Advocacy System must meet the requirements of section 143 and 144 of the Act (42 U.S.C. 15043 and 15044) and that system must be operational.

(b) Allotments must be used to supplement and not to supplant the level of non-Federal funds available in the State for activities under the Act, which shall include activities on behalf of individuals with developmental disabilities to remedy abuse, neglect, and violations of rights as well as information and referral activities.

(c) A P&A shall not implement a policy or practice restricting the remedies that may be sought on behalf of individuals with developmental disabilities or compromising the authority of the P&A to pursue such remedies through litigation, legal action or other forms of advocacy. Under this requirement, States may not establish a policy or practice, which requires the P&A to: Obtain the State's review or approval of the P&A's plans to undertake a particular advocacy initiative, including specific litigation (or to pursue litigation rather than some other remedy or approach); refrain from representing individuals with particular types of concerns or legal claims, or refrain from otherwise pursuing a particular course of action designed to remedy a violation of rights, such as educating policymakers about the need for modification or adoption of laws or policies affecting the rights of individuals with developmental disabilities; restrict the manner of the P&A's investigation in a way that is inconsistent with the System's required authority under the DD Act; or similarly interfere with the P&A's exercise of such authority. The requirements of this paragraph (c) shall not prevent P&As, including those functioning as agencies within State governments, from developing case or client acceptance criteria as part of the annual priorities identified by the P&A as described in §1326.23(c). Clients must be informed at the time they apply for services of such criteria.

(d) A Protection and Advocacy System shall be free from hiring freezes, reductions in force, prohibitions on staff travel, or other policies, imposed by the State, to the extent that such policies would impact system program staff or functions funded with Federal funds, and would prevent the system from carrying out its mandates under the Act.

(e) A Protection and Advocacy System shall have sufficient staff, qualified by training and experience, to carry out the responsibilities of the system in accordance with the priorities of the system and requirements of the Act. These responsibilities include the investigation of allegations of abuse, neglect and representations of individuals with developmental disabilities regarding rights violations.

(f) A Protection and Advocacy System may exercise its authority under State law where the State authority exceeds the authority required by the Developmental Disabilities Assistance and Bill of Rights Act of 2000. However, State law must not diminish the required authority of the Protection and Advocacy System as set by the Act.

(g) Each Protection and Advocacy System that is a public system without a multimember governing or advisory board must establish an advisory council in order to provide a voice for individuals with developmental disabilities. The Advisory Council shall advise the Protection and Advocacy System on program policies and priorities. The Advisory Council and Governing Board shall be comprised of a majority of individuals with disabilities who are eligible for services, have received or are receiving services, parents, family members, guardians, advocates, or authorized representatives of such individuals.

(h) Prior to any Federal review of the State program, a 30-day notice and an opportunity for public comment must be published in the FEDERAL REGISTER. Reasonable effort shall be made by

AIDD to seek comments through notification to major disability advocacy groups, the State Bar, disability law resources, the State Councils on Developmental Disabilities, and the University Centers for Excellence in Developmental Disabilities Education, Research, and Service, for example, through newsletters and publication of those organizations. The findings of public comments may be consolidated if sufficiently similar issues are raised and they shall be included in the report of the onsite visit.

(i) Before the Protection and Advocacy System releases information to individuals not otherwise authorized to receive it, the Protection and Advocacy System must obtain written consent from the client requesting assistance or his or her guardian.

(j) *Contracts for program operations.* (1) An eligible P&A system may contract for the operation of part of its program with another public or private nonprofit organization with demonstrated experience working with individuals with developmental disabilities, provided that:

(i) The eligible P&A system institutes oversight and monitoring procedures which ensure that any and all subcontractors will be able to meet all applicable terms, conditions and obligations of the Federal grant, including but not limited to the ability to pursue all forms of litigation under the DD Act;

(ii) The P&A exercises appropriate oversight to ensure that the contracting organization meets all applicable responsibilities and standards which apply to P&As, including but not limited to, the confidentiality provisions in the DD Act and regulations, ethical responsibilities, program accountability and quality controls;

(2) Any eligible P&A system should work cooperatively with existing advocacy agencies and groups and, where appropriate, consider entering into contracts for protection and advocacy services with organizations already working on behalf of individuals with developmental disabilities.

§ 1326.22 Periodic reports: State Protection and Advocacy System.

(a) By January 1 of each year, each State Protection and Advocacy System shall submit to AIDD, an Annual Program Performance Report. In order to be accepted, the Report must meet the requirements of section 144(e) of the Act (42 U.S.C. 15044), the applicable regulation and include information on the System's program necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005). The Report shall describe the activities, accomplishments, and expenditures of the system during the preceding fiscal year. Reports shall include a description of the system's goals and the extent to which the goals were achieved, barriers to their achievement; the process used to obtain public input, the nature of such input, and how such input was used; the extent to which unserved or underserved individuals or groups, particularly from ethnic or racial groups or geographic regions (*e.g.*, rural or urban areas) were the target of assistance or service; and other such information on the Protection and Advocacy System's activities requested by AIDD.

(b) Financial status reports (standard form 425) must be submitted by the agency administering and operating the State Protection and Advocacy System semiannually.

(c) By January 1 of each year, the State Protection and Advocacy System shall submit to AIDD, an Annual Statement of Goals and Priorities, (SGP), for the coming fiscal year as required under section 143(a)(2)(C) of the Act (42 U.S.C. 15043). In order to be accepted by AIDD, an SGP must meet the requirements of section 143 of the Act.

(1) The SGP is a description and explanation of the system's goals and priorities for its activities, selection criteria for its individual advocacy and training activities, and the outcomes it strives to accomplish. The SGP is developed through data driven strategic planning. If changes are made to the goals or the indicators of progress established for a year, the SGP must be amended to reflect those changes. The SGP must include a description of how the Protection and Advocacy System

operates, and where applicable, how it coordinates the State Protection and Advocacy program for individuals with developmental disabilities with other Protection and Advocacy programs administered by the State Protection and Advocacy System. This description must include the System's processes for intake, internal and external referrals, and streamlining of advocacy services. If the System will be requesting or requiring fees or donations from clients as part of the intake process, the SGP must state that the system will be doing so. The description also must address collaboration, the reduction of duplication and overlap of services, the sharing of information on service needs, and the development of statements of goals and priorities for the various advocacy programs.

(2) Priorities as established through the SGP serve as the basis for the Protection and Advocacy System to determine which cases are selected in a given fiscal year. Protection and Advocacy Systems have the authority to turn down a request for assistance when it is outside the scope of the SGP, but they must inform individuals when this is the basis for turning them down.

(d) Each fiscal year, the Protection and Advocacy System shall:

(1) Obtain formal public input on its Statement of Goals and Priorities;

(2) At a minimum, provide for a broad distribution of the proposed Statement of Goals and Priorities for the next fiscal year in a manner accessible to individuals with developmental disabilities and their representatives, allowing at least 45 days from the date of distribution for comment;

(3) Provide to the State Councils on Developmental Disabilities and the University Centers for Excellence in Developmental Disabilities Education, Research and Service a copy of the proposed Statement of Goals and Priorities for comment concurrently with the public notice;

(4) Incorporate or address any comments received through public input and any input received from the State Councils on Developmental Disabilities and the University Centers for Excellence in Developmental Disabilities Education, Research and Service in the final Statement submitted; and

(5) Address how the Protection and Advocacy System, State Councils on Developmental Disabilities, and University Centers for Excellence in Developmental Disabilities Education Research and Service will collaborate with each other and with other public and private entities.

§ 1326.23 Non-allowable costs for the State Protection and Advocacy System.

(a) Federal financial participation is not allowable for:

(1) Costs incurred for activities on behalf of individuals with developmental disabilities to solve problems not directly related to their disabilities and which are faced by the general populace. Such activities include but are not limited to: Preparation of wills, divorce decrees, and real estate proceedings. Allowable costs in such cases would include the Protection and Advocacy System providing disability-related technical assistance information and referral to appropriate programs and services; and

(2) Costs not allowed under other applicable statutes, Departmental regulations and issuances of the Office of Management and Budget.

(b) Attorneys' fees are considered program income pursuant to 45 CFR part 75 and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys' fees, including those earned by contractors and those received after the project period in which they were earned.

§ 1326.24 Allowable litigation costs.

Allotments may be used to pay the otherwise allowable costs incurred by a Protection and Advocacy System in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations impacting the ability of individuals with developmental disabilities to obtain access to records and when it appears on behalf of named plaintiffs or a class of plaintiff for such purposes.

Subpart C—Access to Records, Service Providers, and Individuals With Developmental Disabilities

§ 1326.25 Access to records.

(a) Pursuant to sections 143(a)(2), (A)(i), (B), (I), and (J) of the Act, and subject to the provisions of this section, a Protection and Advocacy (P&A) System, and all of its authorized agents, shall have access to the records of individuals with developmental disabilities under the following circumstances:

(1) If authorized by an individual who is a client of the system, or who has requested assistance from the system, or by such individual's legal guardian, conservator or other legal representative.

(2) In the case of an individual to whom all of the following conditions apply:

(i) The individual, due to his or her mental or physical condition, is unable to authorize the system to have access;

(ii) The individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions); and

(iii) The individual has been the subject of a complaint to the P&A system, or the P&A system has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been subject to abuse and neglect.

(3) In the case of an individual, who has a legal guardian, conservator, or other legal representative, about whom a complaint has been received by the system or, as a result of monitoring or other activities, the system has determined that there is probable cause to believe that the individual with developmental disability has been subject to abuse or neglect, whenever the following conditions exist:

(i) The P&A system has made a good faith effort to contact the legal guardian, conservator, or other legal representative upon prompt receipt (within the timelines set forth in paragraph (c) of this section) of the contact information (which is required to include but not limited to name, address, telephone numbers, and email address) of the legal guardian, conservator, or other legal representative;

(ii) The system has offered assistance to the legal guardian, conservator, or other legal representative to resolve the situation; and

(iii) The legal guardian, conservator, or other legal representative has failed or refused to provide consent on behalf of the individual.

(4) If the P&A determines there is probable cause to believe that the health or safety of an individual is in serious and immediate jeopardy, no consent from another party is needed.

(5) In the case of death, no consent from another party is needed. Probable cause to believe that the death of an individual with a developmental disability resulted from abuse or neglect or any other specific cause is not required for the P&A system to obtain access to the records. Any individual who dies in a situation in which services, supports, or other assistance are, have been, or may customarily be provided to individuals with developmental disabilities shall, for the purposes of the P&A system obtaining access to the individual's records, be deemed an ''individual with a developmental disability.''

(b) Individual records to which P&A systems must have access under section 143(a)(2), (A)(i), (B), (I), and (J) of the Act (whether written or in another medium, draft, preliminary or final, including handwritten notes, electronic files, photographs or video or audiotape records) shall include, but shall not be limited to:

(1) Individual records prepared or received in the course of providing intake, assessment, evaluation, education, training and other services; supports or assistance, including medical records, financial records, and monitoring and other reports prepared or received by a service provider. This includes records stored or maintained at sites other than that of the service provider, as well as records that were not prepared by the service provider, but received by the service provider from other service providers.

(2) Reports prepared by a Federal, State or local governmental agency, or

a private organization charged with investigating incidents of abuse or neglect, injury or death. The organizations whose reports are subject to this requirement include, but are not limited to, agencies in the foster care systems, developmental disabilities systems, prison and jail systems, public and private educational systems, emergency shelters, criminal and civil law enforcement agencies such as police departments, agencies overseeing juvenile justice facilities, juvenile detention facilities, all pre- and post-adjudication juvenile facilities, State and Federal licensing and certification agencies, and private accreditation organizations such as the Joint Commission on the Accreditation of Health Care Organizations or by medical care evaluation or peer review committees, regardless of whether they are protected by federal or state law. The reports subject to this requirement describe any or all of the following:

(i) The incidents of abuse, neglect, injury, and/or death;

(ii) The steps taken to investigate the incidents;

(iii) Reports and records, including personnel records, prepared or maintained by the service provider in connection with such reports of incidents; or,

(iv) Supporting information that was relied upon in creating a report including all information and records that describe persons who were interviewed, physical and documentary evidence that was reviewed, and the related investigative findings;

(3) Discharge planning records; and

(4) Information in professional, performance, building or other safety standards, and demographic and statistical information relating to a service provider.

(c) The time period in which the P&A system must be given access to records of individuals with developmental disabilities under sections 143(a)(2)(A)(i), (B), (I), and (J) of the Act, and subject to the provisions of this section, varies depending on the following circumstances:

(1) If the P&A system determines that there is probable cause to believe that the health or safety of the individual with a developmental disability is in serious and immediate jeopardy, or in any case of the death of an individual with a developmental disability, access to the records of the individual with a developmental disability, as described in paragraph (b) of this section shall be provided (including the right to inspect and copy records as specified in paragraph (d) of this section) to the P&A system within 24 hours of receipt of the P&A system's written request for the records without the consent of another party.

(2) In all other cases, access to records of individuals with developmental disabilities shall be provided to the P&A system within three business days after the receipt of such a written request from the P&A system.

(d) A P&A shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs. If the service provider or its agents copy the records for the P&A system, it may not charge the P&A system an amount that would exceed the amount customarily charged other non-profit or State government agencies for reproducing documents. At its option, the P&A may make written notes when inspecting information and records, and may use its own photocopying equipment to obtain copies. If a party other than the P&A system performs the photocopying or other reproduction of records, it shall provide the photocopies or reproductions to the P&A system within the time frames specified in paragraph (c) of this section. In addition, where records are kept or maintained electronically they shall be provided to the P&A electronically.

(e) The Health Insurance Portability and Accountability Act Privacy Rule permits the disclosure of protected health information (PHI) without the authorization of the individual to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law.

(f) Educational agencies, including public, private, and charter schools, as well as, public and private residential and non-residential schools, must provide a P&A with the name of and contact information for the parent or guardian of a student for whom the

P&A has probable cause to obtain records under the DD Act.

§ 1326.26 Denial or delay of access to records.

If a P&A system's access is denied or delayed beyond the deadlines specified in §1326.25, the P&A system shall be provided, within one business day after the expiration of such deadline, with a written statement of reasons for the denial or delay. In the case of a denial for alleged lack of authorization, the name, address and telephone number of individuals with developmental disabilities and legal guardians, conservators, or other legal representative will be included in the aforementioned response. All of the above information shall be provided whether or not the P&A has probable cause to suspect abuse or neglect, or has received a complaint.

§ 1326.27 Access to service providers and individuals with developmental disabilities.

(a) Access to service providers and individuals with developmental disabilities shall be extended to all authorized agents of a P&A system.

(b) The P&A system shall have reasonable unaccompanied access to individuals with developmental disabilities at all times necessary to conduct a full investigation of an incident of abuse or neglect.

(1) Such access shall be afforded upon request, by the P&A system when:

(i) An incident is reported or a complaint is made to the P&A system;

(ii) The P&A system determines that there is probable cause to believe that an incident has or may have occurred; or

(iii) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with a developmental disability.

(2) A P&A system shall have reasonable unaccompanied access to public and private service providers, programs in the State, and to all areas of the service provider's premises that are used by individuals with developmental disabilities or are accessible to them. Such access shall be provided without advance notice and made available immediately upon request. This authority shall include the opportunity to interview any individual with developmental disability, employee, or other persons, including the person thought to be the victim of such abuse, who might be reasonably believed by the system to have knowledge of the incident under investigation. The P&A may not be required to provide the name or other identifying information regarding the individual with developmental disability or staff with whom it plans to meet; neither may the P&A be required to justify or explain its interaction with such persons.

(c) In addition to the access required under paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to service providers for routine circumstances. This includes areas which are used by individuals with developmental disabilities and are accessible to individuals with developmental disabilities at reasonable times, which at a minimum shall include normal working hours and visiting hours. A P&A also shall be permitted to attend treatment planning meetings concerning individuals with developmental disabilities with the consent of the individual or his or her guardian, conservator or other legal representative, except that no consent is required if the individual, due to his or mental or physical condition, is unable to authorize the system to have access to a treatment planning meeting; and the individual does not have a legal guardian, conservator or other legal representative, or the individual's guardian is the State (or one of its political subdivisions).

(1) Access to service providers shall be afforded immediately upon an oral or written request by the P&A system. Except where complying with the P&A's request would interfere with treatment or therapy to be provided, service providers shall provide access to individuals for the purpose covered by this paragraph. If the P&As access to an individual must be delayed beyond 24 hours to allow for the provision of treatment or therapy, the P&A shall receive access as soon as possible thereafter. In cases where a service provider denies a P&A access to an individual with a developmental disability on the grounds that such access would interfere with the individual's

treatment or therapy, the service provider shall, no later than 24 hours of the P&A's request, provide the P&A with a written statement from a physician stating that P&A access to the individual will interfere with the individual's treatment and therapy, and the time and circumstances under which the P&A can interview the individual. If the physician states that the individual cannot be interviewed in the next 24 hours, the P&A and the service provider shall engage in a good faith interactive process to determine when and under what circumstances the P&A can interview the individual. If the P&A and the service provider are unable to agree upon the time and circumstance, they shall select a mutually agreeable independent physician who will determine when and under what circumstances the individual may be interviewed. The expense of the independent physician's services shall be paid for by the service provider. Individuals with developmental disabilities subject to the requirements in this paragraph include adults and minors who have legal guardians or conservators.

(2) P&A activities shall be conducted so as to minimize interference with service provider programs, respect individuals with developmental disabilities' privacy interests, and honor a recipient's request to terminate an interview. This access is for the purpose of:

(i) Providing information, training, and referral for programs addressing the needs of individuals with developmental disabilities, information and training about individual rights, and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system. P&As shall be permitted to post, in an area which individuals with developmental disabilities receive services, a poster which states the protection and advocacy services available from the P&A system, including the name, address and telephone number of the P&A system.

(ii) Monitoring compliance with respect to the rights and safety of individuals with developmental disabilities; and

(iii) Access including, but is not limited to inspecting, viewing, photographing, and video recording all areas of a service provider's premises or under the service provider's supervision or control which are used by individuals with developmental disabilities or are accessible to them. This authority does not include photographing or video recording individuals with developmental disabilities unless they consent or State laws allow such activities.

(d) Unaccompanied access to individuals with developmental disabilities including, but not limited to, the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. This authority shall also include the opportunity to meet, communicate with, or interview any individual with a developmental disability, including a person thought to be the subject of abuse, who might be reasonably believed by the P&A system to have knowledge of an incident under investigation or non-compliance with respect to the rights and safety of individuals with developmental disabilities. Except as otherwise required by law the P&A shall not be required to provide the name or other identifying information regarding the individual with a disability with whom it plans to meet; neither may the P&A be required to justify or explain its interaction with such persons.

§ 1326.28 Confidentiality of State Protection and Advocacy System records.

(a) A P&A shall, at minimum, comply with the confidentiality provisions of all applicable Federal and State laws.

(b) Records maintained by the P&A system are the property of the P&A system which must protect them from loss, damage, tampering, unauthorized use, or tampering. The P&A system must:

(1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(i) Clients;

(ii) Individuals who have been provided general information or technical assistance on a particular matter;

(iii) The identity of individuals who report incidents of abuse or neglect, or who furnish information that forms the basis for a determination that probable cause exists; and

(iv) Names of individuals who have received services, supports or other assistance, and who provided information to the P&A for the record.

(v) Peer review records.

(2) Have written policies governing the access, storage, duplication and release of information from client records, including the release of information peer review records.

(3) Obtain written consent from the client, or from his or her legal representative; individuals who have been provided general information or technical assistance on a particular matter; and individuals who furnish reports or information that form the basis for a determination of probable cause, before releasing information concerning such individuals to those not otherwise authorized to receive it.

(c) Nothing in this subpart shall prevent the P&A system from issuing a public report of the results of an investigation which maintains the confidentiality of the individuals listed in paragraph (a)(1) of this section, or reporting the results of an investigation in a manner which maintains the confidentiality of such individuals, to responsible investigative or enforcement agencies should an investigation reveal information concerning the service provider, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies responsible for service provider licensing or accreditation, employee discipline, employee licensing or certification, or criminal investigation or prosecution.

(d) Notwithstanding the confidentiality requirements of this section, the P&A may make a report to investigative or enforcement agencies, as described in paragraph (b) of this section, which reveals the identity of an individual with developmental disability, and information relating to his or her status or treatment:

(1) When the system has received a complaint that the individual has been or may be subject to abuse and neglect, or has probable cause (which can be the result of monitoring or other activities including media reports and newspaper articles) to believe that such individual has been or may be subject to abuse or neglect;

(2) When the system determines that there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy; or

(3) In any case of the death of an individual whom the system believes may have had a developmental disability.

Subpart D—Federal Assistance to State Councils on Developmental Disabilities

§ 1326.30 State plan requirements.

(a) In order to receive Federal funding under this subpart, each State Developmental Disabilities Council must prepare and submit a State plan which meets the requirements of sections 124 and 125 of the Act (42 U.S.C. 15024 and 15025), and the applicable regulation. Development of the State plan and its periodic updating are the responsibility of the State Council on Developmental Disabilities. As provided in section 124(d) of the Act, the Council shall provide opportunities for public input and review (in accessible formats and plain language requirements), and will consult with the Designated State Agency to determine that the plan is consistent with applicable State laws, and obtain appropriate State plan assurances.

(b) Failure to comply with the State plan requirements may result in the loss of Federal funds as described in section 127 of the Act (42 U.S.C. 15027). The Secretary, or his or her designee, must provide reasonable notice and an opportunity for a hearing to the Council and the Designated State Agency before withholding any payments for planning, administration, and services.

(c) The State plan must be submitted through the designated system by AIDD which is used to collect quantifiable and qualifiable information from the State Councils on Developmental Disabilities. The plan must:

(1) Identify the agency or office in the State designated to support the Council in accordance with section

124(c)(2) and 125(d) of the Act. The Designated State Agency shall provide required assurances and support services requested from and negotiated with the Council.

(2) For a year covered by the State plan, include for each area of emphasis under which a goal or goals have been identified, the measures of progress the Council has established or is required to apply in its progress in furthering the purpose of the Developmental Disabilities Assistance and Bill of Rights Act through advocacy, capacity building, and systemic change activities.

(3) Provide for the establishment and maintenance of a Council in accordance with section 125 of the Act and describe the membership of such Council. The non-State agency members of the Council shall be subject to term limits to ensure rotating membership.

(d) The State plan must be updated during the five-year period when substantive changes are contemplated in plan content, including changes under paragraph (c)(2) of this section.

(e) The State plan may provide for funding projects to demonstrate new approaches to direct services that enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. Direct service demonstrations must be short-term, with a strategy to locate on-going funding from other sources after five years. Any State desiring to receive assistance beyond five years, under this subtitle, shall include in the State plan the information listed in paragraphs (e)(1) through (3) of this section, and AIDD reserves the right as the overseeing agency to deny the continuation of the demonstration project beyond five years.

(1) The estimated period for the project's continued duration;

(2) Justifications of why the project cannot be funded by the State or other sources and should receive continued funding; and

(3) Provide data outcomes showing evidence of success.

(f) The State plan may provide for funding of other demonstration projects or activities, including but not limited to outreach, training, technical assistance, supporting and educating communities, interagency collaboration and coordination, coordination with related councils, committees and programs, barrier elimination, systems design and redesign, coalition development and citizen participation, and informing policymakers. Demonstrations must be short-term, with a strategy to locate on-going funding from other sources after five years. Any State desiring to receive assistance beyond five years, under this subtitle, shall include in the State plan the information listed in paragraphs (f)(1) through (3) of this section, and AIDD reserves the right as the overseeing agency to deny the continuation of the demonstration project beyond five years.

(1) The estimated period for the project's continued duration;

(2) Justifications on why the project cannot be funded by the State or other resources and should receive continued funding; and

(3) Provide data showing evidence of success.

(g) The State plan must contain assurances that are consistent with section 124 of the Act (42 U.S.C. 15024).

§ 1326.31 State plan submittal and approval.

(a) The Council shall issue a public notice about the availability of the proposed State plan or State plan amendment(s) for comment. The notice shall be published in formats accessible to individuals with developmental disabilities and the general public (*e.g.* public forums, Web sites, newspapers, and other current technologies) and shall provide a 45-day period for public review and comment. The Council shall take into account comments submitted within that period, and respond in the State plan to significant comments and suggestions. A summary of the Council's responses to State plan comments shall be submitted with the State plan and made available for public review. This document shall be made available in accessible formats upon request.

(b) The State plan or amendment must be submitted to AIDD 45 days prior to the fiscal year for which it is applicable.

(c) Failure to submit an approvable State plan or amendment prior to the

Federal fiscal year for which it is applicable may result in the loss of Federal financial participation. Plans received during a quarter of the Federal fiscal year are approved back to the first day of the quarter so costs incurred from that point forward are approvable. Costs resulting from obligations incurred during the period of the fiscal year for which an approved plan is not in effect are not eligible for Federal financial participation.

(d) The Secretary, or his or her designee, must approve any State plan or plan amendment provided it meets the requirements of the Act and this regulation.

§ 1326.32 Periodic reports: Federal assistance to State Councils on Developmental Disabilities.

(a) The Governor or appropriate State financial officer must submit financial status reports (AIDD–02B) on the programs funded under this subpart semiannually.

(b) By January 1 of each year, the State Council on Developmental Disabilities shall submit to AIDD, an Annual Program Performance Report through the system established by AIDD. In order to be accepted by AIDD, reports must meet the requirements of section 125(c)(7) of the Act (42 U.S.C. 15025) and the applicable regulations, include the information on its program necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005), and any other information requested by AIDD. Each Report shall contain information about the progress made by the Council in achieving its goals including:

(1) A description of the extent to which the goals were achieved;

(2) A description of the strategies that contributed to achieving the goals;

(3) To the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(4) Separate information on the self-advocacy goal described in section 124(c)(4)(A)(ii) of the Act (42 U.S.C. 15024);

(5) As appropriate, an update on the results of the comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, including the extent of unmet needs for services, supports, and other assistance for those individuals and their families, in the State as required in section 124(c)(3) of the Act (42 U.S.C. 15024);

(6) Information on individual satisfaction with Council supported or conducted activities;

(7) A description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) receive;

(8) To the extent available, a description of the adequacy of health care and other services, supports, and assistance received by individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act);

(9) An accounting of the funds paid to the State awarded under the DD Council program;

(10) A description of resources made available to carry out activities to assist individuals with developmental disabilities directly attributable to Council actions;

(11) A description of resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(12) A description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(c) Each Council must include in its Annual Program Performance Report information on its achievement of the measures of progress.

§ 1326.33 Protection of employees interests.

(a) Based on section 124(c)(5)(J) of the Act (42 U.S.C. 15024(c)(5)(J)), the State plan must assure fair and equitable arrangements to protect the interest of all institutional employees affected by actions under the plan to provide community living activities. The State

must inform employees of the State's decision to provide for community living activities. Specific arrangements for the protection of affected employees must be developed through negotiations between the appropriate State authorities and employees or their representatives.

(b) Fair and equitable arrangements must include procedures that provide for the impartial resolution of disputes between the State and an employee concerning the interpretation, application, and enforcement of protection arrangements. To the maximum extent practicable, these arrangements must include provisions for:

(1) The preservation of rights and benefits;

(2) Guaranteeing employment to employees affected by action under the plan to provide alternative community living arrangements; and

(3) Employee training and retraining programs.

§ 1386.34 Designated State Agency.

(a) The Designated State Agency shall provide the required assurances and other support services as requested and negotiated by the Council. These include:

(1) Provision of financial reporting and other services as provided under section 125(d)(3)(D) of the Act; and

(2) Information and direction, as appropriate, on procedures on the hiring, supervision, and assignment of staff in accordance with State law.

(b) If the State Council on Developmental Disabilities requests a review by the Governor (or State legislature, if applicable) of the Designated State Agency, the Council must provide documentation of the reason for change, and recommend a new preferred Designated State Agency by the Governor (or State legislature, if applicable).

(c) After the review is completed by the Governor (or State legislature, if applicable), and if no change is made, a majority of the non-State agency members of the Council may appeal to the Secretary, or his or her designee, for a review of the Designated State Agency if the Council's independence as an advocate is not assured because of the actions or inactions of the Designated State agency.

(d) The following steps apply to the appeal of the Governor's (or State legislature, if applicable) designation of the Designated State Agency.

(1) Prior to an appeal to the Secretary, or his or her designee, the State Council on Developmental Disabilities, must give a 30 day written notice, by certified mail, to the Governor (or State legislature, if applicable) of the majority of non-State members' intention to appeal the designation of the Designated State Agency.

(2) The appeal must clearly identify the grounds for the claim that the Council's independence as an advocate is not assured because of the action or inactions of the Designated State Agency.

(3) Upon receipt of the appeal from the State Council on Developmental Disabilities, the Secretary, or his or her designee, will notify the State Council on Developmental Disabilities and the Governor (or State legislature, if applicable), by certified mail, that the appeal has been received and will be acted upon within 60 days. The Governor (or State legislature, if applicable) shall within 10 working days from the receipt of the Secretary's, or his or her designated person's, notification provide written comments to the Secretary, or his or her designee, (with a copy sent by registered or certified mail to the Council) on the claims in the Council's appeal. Either party may request, and the Secretary, or his or her designee, may grant, an opportunity for an informal meeting with the Secretary, or his or her designee, at which representatives from both parties will present their views on the issues in the appeal. The meeting will be held within 20 working days of the submission of written comments by the Governor (or State legislature, if applicable). The Secretary, or his or her designee, will promptly notify the parties of the date and place of the meeting.

(4) The Secretary, or his or her designee, will review the issue(s) and provide a final written decision within 60 days following receipt of the appeal from the State Council on Developmental Disabilities. If the determination is made that the Designated State Agency should be redesignated, the

Governor (or State legislature, if applicable) must provide written assurance of compliance within 45 days from receipt of the decision.

(5) Anytime during this appeals process the State Council on Developmental Disabilities may withdraw such request if resolution has been reached with the Governor (or State legislature, if applicable) on the Designated State Agency. The Governor (or State legislature, if applicable) must notify the Secretary, or his or her designee, in writing of such a decision.

(e) The Designated State Agency may authorize the Council to contract with State agencies other than the Designated State Agency to perform functions of the Designated State Agency.

§ 1326.35 Allowable and non-allowable costs for Federal assistance to State Councils on Developmental Disabilities.

(a) Under this subpart, Federal funding is available for costs resulting from obligations incurred under the approved State plan for the necessary expenses of administering the plan, which may include the establishment and maintenance of the State Council, and all programs, projects, and activities carried out under the State plan.

(b) Expenditures which are not allowable for Federal financial participation are:

(1) Costs incurred by institutions or other residential or non-residential programs which do not comply with the Congressional findings with respect to the rights of individuals with developmental disabilities in section 109 of the Act (42 U.S.C. 15009).

(2) Costs incurred for activities not provided for in the approved State plan; and

(3) Costs not allowed under other applicable statutes, Departmental regulations, or issuances of the Office of Management and Budget.

(c) Expenditure of funds that supplant State and local funds are not allowed. Supplanting occurs when State or local funds previously used to fund activities under the State plan are replaced by Federal funds for the same purpose. However, supplanting does not occur if State or local funds are replaced with Federal funds for a particular activity or purpose in the approved State plan if the replaced State or local funds are then used for other activities or purposes in the approved State plan.

(d) For purposes of determining aggregate minimum State share of expenditures, there are three categories of expenditures:

(1) Expenditures for projects or activities undertaken directly by the Council and Council staff to implement State plan activities, as described in section 126(a)(3) of the Act, require no non-Federal aggregate of the necessary costs of such activities.

(2) Expenditures for projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, or his or her designee, but not carried out directly by the Council and Council staff, as described in section 126(a)(2) of the Act, shall have non-Federal funding of at least 10 percent in the aggregate of the necessary costs of such projects.

(3) All other projects not directly carried out by the Council and Council staff shall have non-Federal funding of at least 25 percent in the aggregate of the necessary costs of such projects.

(e) The Council may vary the non-Federal funding required on a project-by-project, activity-by-activity basis (both poverty and non-poverty activities), including requiring no non-Federal funding from particular projects or activities as the Council deems appropriate so long as the requirement for aggregate non-Federal funding is met.

§ 1326.36 Final disapproval of the State plan or plan amendments.

The Department will disapprove any State plan or plan amendment only after the following procedures have been complied with:

(a) The State plan has been submitted to AIDD for review. If after contacting the State on issues with the plan with no resolution, a detailed written analysis of the reasons for recommending disapproval shall be prepared and provided to the State Council and State Designated Agency.

(b) Once the Secretary, or his or her designee, has determined that the

State plan, in whole or in part, is not approvable, notice of this determination shall be sent to the State with appropriate references to the records, provisions of the statute and regulations, and all relevant interpretations of applicable laws and regulations. The notification of the decision must inform the State of its right to appeal in accordance with subpart E of this part.

(c) The Secretary's, or his or her designee's, decision has been forwarded to the State Council and its Designated State Agency by certified mail with a return receipt requested.

(d) A State has filed its request for a hearing with the Secretary, or his or her designee, within 21 days of the receipt of the decision. The request for a hearing must be sent by certified mail to the Secretary, or his or her designee. The date of mailing the request is considered the date of filing if it is supported by independent evidence of mailing. Otherwise the date of receipt shall be considered the date of filing.

Subpart E—Practice and Procedure for Hearings Pertaining to States' Conformity and Compliance With Developmental Disabilities State Plans, Reports, and Federal Requirements

GENERAL

§ 1326.80 Definitions.

For purposes of this subpart:

Payment or allotment. The term ''payment'' or ''allotment'' means an amount provided under part B or C of the Developmental Disabilities Assistance and Bill or Rights Act of 2000. This term includes Federal funds provided under the Act irrespective of whether the State must match the Federal portion of the expenditure. This term shall include funds previously covered by the terms ''Federal financial participation,'' ''the State's total allotment,'' ''further payments,'' ''payments,'' ''allotment'' and ''Federal funds.''

Presiding officer. The term ''presiding officer'' means anyone designated by the Secretary to conduct any hearing held under this subpart. The term includes the Secretary, or the Secretary's designee, if the Secretary or his or her designee presides over the hearing. For purposes of this subpart the Secretary's ''designee'' refers to a person, such as the Administrator of ACL, who has been delegated broad authority to carry out all or some of the authorizing statute. The term designee does not refer to a presiding officer designated only to conduct a particular hearing or hearings.

§ 1326.81 Scope of rules.

(a) The rules of procedures in this subpart govern the practice for hearings afforded by the Department to States pursuant to sections 124, 127, and 143 of the Act. (42 U.S.C. 15024, 15027 and 15043).

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues that are, or otherwise would be, considered at the hearing. Negotiation and resolution of issues are not part of the hearing, and are not governed by the rules in this subpart, except as otherwise provided in this subpart.

§ 1326.82 Records to the public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding are subject to public inspection.

§ 1326.83 Use of gender and number.

As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing either gender may be applied to the other gender or to organizations.

§ 1326.84 Suspension of rules.

Upon notice to all parties, the Secretary or the Secretary's designee may modify or waive any rule in this subpart, unless otherwise expressly provided, upon determination that no party will be unduly prejudiced and justice will be served.

§ 1326.85 Filing and service of papers.

(a) All papers in the proceedings must be filed with the designated individual in an original and two copies. Only the originals of exhibits and transcripts of testimony need be filed.

(b) Copies of papers in the proceedings must be served on all parties by personal delivery or by mail. Service on the party's designated representative is deemed service upon the party.

PRELIMINARY MATTERS—NOTICE AND PARTIES

§ 1326.90 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Secretary, or his or her designee, to the State Council on Developmental Disabilities and the Designated State Agency, or to the State Protection and Advocacy System or designating official. The notice must state the time and place for the hearing and the issues that will be considered. The notice must be published in the FEDERAL REGISTER.

§ 1326.91 Time of hearing.

The hearing must be scheduled not less than 30 days, nor more than 60 days after the notice of the hearing is mailed to the State.

§ 1326.92 Place.

The hearing must be held on a date and at a time and place determined by the Secretary, or his or her designee with due regard for convenience, and necessity of the parties or their representatives. The site of the hearing shall be accessible to individuals with disabilities.

§ 1326.93 Issues at hearing.

(a) Prior to a hearing, the Secretary or his or her designee may notify the State in writing of additional issues which will be considered at the hearing. That notice must be published in the FEDERAL REGISTER. If that notice is mailed to the State less than 20 days before the date of the hearing, the State or any other party, at its request, must be granted a postponement of the hearing to a date 20 days after the notice was mailed or such later date as may be agreed to by the Secretary or his or her designee.

(b) If any issue is resolved in whole or in part, but new or modified issues are presented, the hearing must proceed on the new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Secretary, or his or her designee, finds that the State has come into compliance with Federal requirements on any issue in whole or in part, he or she must remove the issue from the proceedings in whole or in part as may be appropriate. If all issues are removed the Secretary, or his or her designee, must terminate the hearing.

(2) Prior to the removal of an issue, in whole or in part, from a hearing involving issues relating to the conformity with Federal requirements under part B of the Act, of the State plan or the activities of the State Protection and Advocacy System, the Secretary, or his or her designee, must provide all parties other than the Department and the State (see §1386.94(b)) with the statement of his or her intention to remove an issue from the hearing and the reasons for that decision. A copy of the proposed State plan provision or document explaining changes in the activities of the State's Protection and Advocacy System on which the State and the Secretary, or his or her designee, have settled must be sent to the parties. The parties must have an opportunity to submit in writing within 15 days their views as to, or any information bearing upon, the merits of the proposed provision and the merits of the reasons for removing the issue from the hearing.

(d) In hearings involving questions of noncompliance of a State's operation of its program under part B of the Act, with the State plan or with Federal requirements, or compliance of the State Protection and Advocacy System with Federal requirements, the same procedure set forth in paragraph (c)(2) of this section must be followed with respect to any report or evidence resulting in a conclusion by the Secretary, or his or her designee, that a State has achieved compliance.

(e) The issues considered at the hearing must be limited to those issues of which the State is notified as provided

in §1326.90 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and may not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 1326.94 Request to participate in hearing.

(a) The Department, the State, the State Council on Developmental Disabilities, the Designated State Agency, and the State Protection and Advocacy System, as appropriate, are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties if the issues to be considered at the hearing have caused them injury and their interests are relevant to the issues in the hearing.

(2) Any individual or group wishing to participate as a party must file a petition with the designated individual within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and must serve a copy on each party of record at that time in accordance with §1326.85(b). The petition must concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues the petitioner wishes to address; and

(iv) Whether the petitioner intends to present witnesses.

(c)(1) Any interested person or organization wishing to participate as amicus curiae must file a petition with the designated individual before the commencement of the hearing. The petition must concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which the petitioner intends to present argument.

(2) The presiding officer may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing at the point in the proceedings specified by the presiding officer. It may submit a written statement of position to the presiding officer prior to the beginning of a hearing and must serve a copy on each party. It also may submit a brief or written statement at such time as the parties submit briefs and must serve a copy on each party.

HEARING PROCEDURES

§ 1326.100 Who presides.

(a) The presiding officer at a hearing must be the Secretary, his or her designee, or another person specifically designated for a particular hearing or hearings.

(b) The designation of a presiding officer must be in writing. A copy of the designation must be served on all parties and amici curiae.

§ 1326.101 Authority of presiding officer.

(a) The presiding officer has the duty to conduct a fair hearing, avoid delay, maintain order, and make a record of the proceedings. The presiding officer has all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceedings;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their positions with respect to the issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on motions and other procedural items on matters pending before him or her, including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude, or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him or her;

(10) If the presiding officer is the Secretary, or his or her designee, make a final decision;

(11) If the presiding officer is a person other than the Secretary or his or her designee, the presiding officer shall certify the entire record, including recommended findings and proposed decision, to the Secretary or his or her designee; and

(12) Take any action authorized by the rules in this subpart or 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel the production of witnesses, papers, or other evidence by subpoena.

(c) If the presiding officer is a person other than the Secretary or his or her designee, his or her authority is to render a recommended decision with respect to program requirements which are to be considered at the hearing. In case of any noncompliance, he or she shall recommend whether payments or allotments should be withheld with respect to the entire State plan or the activities of the State's Protection and Advocacy System, or whether the payments or allotments should be withheld only with respect to those parts of the program affected by such noncompliance.

§ 1326.102 Rights of parties.

All parties may:

(a) Appear by counsel, or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations of facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 1326.103 Discovery.

The Department and any party named in the notice issued pursuant to §1386.90 has the right to conduct discovery (including depositions) against opposing parties as provided by the Federal Rules of Civil Procedure. There is no fixed rule on priority of discovery. Upon written motion, the presiding officer must promptly rule upon any objection to discovery action. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction other than contempt orders authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 1326.104 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it must be presented in statements, memoranda, or briefs, as directed by the presiding officer. Brief opening statements, which shall be limited to a statement of the party's position and what it intends to prove, may be made at hearings.

§ 1326.105 Evidence.

(a) *Testimony.* Testimony by witnesses at the hearing is given orally under oath or affirmation. Witnesses must be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, must be exchanged at the prehearing conference or at a different time prior to the hearing if the presiding officer requires it.

(c) *Rules of evidence.* Technical rules of evidence do not apply to hearings conducted pursuant to this subpart,

but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination are applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record is open to examination by the parties and opportunity must be given to refute facts and arguments advanced on either side of the issues.

§ 1326.106 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or rebellious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 1326.107 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing is placed in the correspondence section of the docket of the proceeding. This material is not deemed part of the evidence or record in the hearing.

§ 1326.108 Official transcript.

The Department will designate the official reporter for all hearings. The official transcript of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed with them is filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance. Transcripts must be taken by stenotype machine and not be voice recording devices, unless otherwise agreed by all of the parties and the presiding officer.

§ 1326.109 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, constitute the exclusive record for decision.

POST-HEARING PROCEDURES, DECISIONS

§ 1386.110 Post-hearing briefs.

The presiding officer must fix the time for filing post-hearing briefs. This time may not exceed 30 days after termination of the hearing and receipt of the transcript. Briefs may contain proposed findings of fact and conclusions of law. If permitted, reply briefs may be filed no later than 15 days after filing of the post-hearing briefs.

§ 1326.111 Decisions following hearing.

(a) If the Secretary, or his or her designee, is the presiding officer, he or she must issue a decision within 60 days after the time for submission of post-hearing briefs has expired.

(b)(1) If the presiding officer is another person designated for a particular hearing or hearings, he or she must, within 30 days after the time for submission of post-hearing briefs has expired, certify the entire record to the Secretary (or his or her designee) including the recommended findings and proposed decision.

(2) The Secretary, or his or her designee, must serve a copy of the recommended findings and proposed decision upon all parties and amici.

(3) Any party may, within 20 days, file exceptions to the recommended findings and proposed decision and supporting brief or statement with the Secretary, or his or her designee.

(4) The Secretary, or his or her designee, must review the recommended decision and, within 60 days of its issuance, issue his or her own decision.

(c) If the Secretary, or his or her designee, concludes:

(1) In the case of a hearing pursuant to sections 124, 127, or 143 of the Act, that a State plan or the activities of

the State's Protection and Advocacy System does not comply with Federal requirements, he or she shall also specify whether the State's payment or allotment for the fiscal year will not be authorized for the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan or the activities of the State's Protection and Advocacy System not affected by the noncompliance.

(2) In the case of a hearing pursuant to section 127 of the Act that the State is not complying with the requirements of the State plan, he or she also must specify whether the State's payment or allotment will be made available to the State or whether, in the exercise of his or her discretion, the payment or allotment will be limited to the parts of the State plan not affected by such noncompliance. The Secretary, or his or her designee, may ask the parties for recommendations or briefs or may hold conferences of the parties on these questions.

(d) The decision of the Secretary, or his or her designee, under this section is the final decision of the Secretary and constitutes ''final agency action'' within the meaning of 5 U.S.C. 704 and the ''Secretary's action'' within the meaning of section 128 of the Act (42 U.S.C. 15028). The Secretary's, or his or her designee's, decision must be promptly served on all parties and amici.

§ 1326.112 Effective date of decision by the Secretary.

(a) If, in the case of a hearing pursuant to section 124 of the Act, the Secretary, or his or her designee, concludes that a State plan does not comply with Federal requirements, and the decision provides that the payment or allotment will be authorized but limited to parts of the State plan not affected by such noncompliance, the decision must specify the effective date for the authorization of the payment or allotment.

(b) In the case of a hearing pursuant to sections 127 or 143 of the Act, if the Secretary, or his or her designee, concludes that the State is not complying with the requirements of the State plan or if the activities of the State's Protection and Advocacy System do not comply with Federal requirements, the decision that further payments or allotments will not be made to the State, or will be limited to the parts of the State plan or activities of the State Protection and Advocacy System not affected, must specify the effective date for withholding payments or allotments.

(c) The effective date may not be earlier than the date of the decision of the Secretary, or his or her designee, and may not be later than the first day of the next calendar quarter.

(d) The provision of this section may not be waived pursuant to § 1386.84.

PART 1327—DEVELOPMENTAL DISABILITIES PROJECTS OF NATIONAL SIGNIFICANCE

AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35647.

§ 1327.1 General requirements.

(a) All projects funded under this part must be of national significance and serve or relate to individuals with developmental disabilities to comply with subtitle E of the Act, sections 161–163 (42 U.S.C. 15081–15083).

(b) In general, Projects of National Significance (PNS) provide technical assistance, collect data, demonstrate exemplary and innovative models, disseminate knowledge at the local and national levels, and otherwise meet the goals of Projects of National Significance section 161 (42 U.S.C. 15081).

(c) Projects of National Significance may engage in one or more of the types of activities provided in section 161(2) of the Act.

(d) In general, eligible applicants for PNS funding are public and private non-profit entities, 42 U.S.C. 15082, such as institutions of higher learning, State and local governments, and Tribal governments. The program announcements will specifically state any further eligibility requirements for the priority areas in the fiscal year.

(e) Faith-based organizations are eligible to apply for PNS funding, providing that the faith-based organizations meet the specific eligibility criteria contained in the program announcement for the fiscal year.

PART 1328—THE NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES, EDUCATION, RESEARCH, AND SERVICE

Sec.

1328.1 Definitions.
1328.2 Purpose.
1328.3 Core functions.
1328.4 National training initiatives on critical and emerging needs.
1328.5 Applications.
1328.6 Governance and administration.
1328.7 Five-year plan and annual report.

AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated and amended at 81 FR 35645, 35647, June 3, 2016.

§ 1328.1 Definitions.

States. For the purpose of this part, ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

§ 1328.2 Purpose.

(a) The Secretary, or his or her designee awards grants to eligible entities designated as University Centers for Excellence in Developmental Disabilities Education, Research, and Service (''UCEDDs'', or ''Centers'') in each State to pay for the Federal share of the cost of the administration and operation of the Centers. Centers shall:

(1) Provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

(2) Be interdisciplinary education, research, and public service units of universities or public not-for-profit entities associated with universities that engage in core functions, described in §1388.3, addressing, directly or indirectly, one or more of the areas of emphasis, as defined in §1385.3 of this chapter.

(b) To conduct National Training Initiatives on Critical and Emerging Needs as described in §1388.4.

§ 1328.3 Core functions.

The Centers described in §1388.2 must engage in the core functions referred to in this section, which shall include:

(a) Provision of interdisciplinary preservice preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of the DD Act of 2000.

(b) Provision of community services:

(1) That provide training or technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(2) That may provide services, supports, and assistance for the persons listed in paragraph (b)(1) of this section through demonstration and model activities.

(c) Conduct of research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families.

(d) Dissemination of information related to activities undertaken to address the purpose of the DD Act of 2000, especially dissemination of information that demonstrates that the network authorized under Subtitle D of the Act is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances.

§ 1328.4 National training initiatives on critical and emerging needs.

(a) Supplemental grant funds for National Training Initiatives (NTIs) on critical and emerging needs may be reserved when each Center described in

section 152 of the DD Act has received a grant award of at least $500,000, adjusted for inflation.

(b) The grants shall be awarded to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families.

(c) The grants shall be awarded on a competitive basis, and for periods of not more than 5 years.

§ 1328.5 Applications.

(a) To be eligible to receive a grant under § 1388.2 for a Center, an entity shall submit to the Secretary, or his or her designee, an application at such time, in such manner, and containing such information, as the Secretary, or his or her designee, may require for approval.

(b) Each application shall describe a five-year plan that must include:

(1) Projected goal(s) related to one or more areas of emphasis described in § 1385.3 of this chapter for each of the core functions.

(2) Measures of progress.

(c) The application shall contain or be supported by reasonable assurances that the entity designated as the Center will:

(1) Meet the measures of progress;

(2) Address the projected goals, and carry out goal-related activities, based on data driven strategic planning and in a manner consistent with the objectives of subtitle D of the Act, that:

(i) Are developed in collaboration with the Consumer Advisory Committee established pursuant to paragraph (c)(5) of this section;

(ii) Are consistent with, and to the extent feasible complement and further, the Council goals contained in the State plan submitted under section 124 of the DD Act of 2000 and the goals of the Protection and Advocacy System established under section 143 of the DD Act of 2000; and

(iii) Will be reviewed and revised annually as necessary to address emerging trends and needs.

(3) Use the funds made available through the grant to supplement, and not supplant, the funds that would otherwise be made available for activities described in § 1388.2(a)(1) and (2).

(4) Protect, consistent with the policy specified in section 101(c) of the DD Act of 2000 the legal and human rights of all individuals with developmental disabilities (especially those individuals under State guardianship who are involved in activities carried out under programs assisted under subtitle D of the Act).

(5) Establish a Consumer Advisory Committee:

(i) Of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

(ii) That is comprised of:

(A) Individuals with developmental disabilities and related disabilities;

(B) Family members of individuals with developmental disabilities;

(C) A representative of the State Protection and Advocacy System;

(D) A representative of the State Council on Developmental Disabilities;

(E) A representative of a self-advocacy organization described in section 124(c)(4)(A)(ii)(I) of the DD Act of 2000 (42 U.S.C. 15024(c)(4)(A)(ii)(I)); and

(F) Representatives of organizations that may include parent training and information centers assisted under section 671or 672 of the Individuals with Disabilities Education Act (20 U.S.C. 1471, 1472), entities carrying out activities authorized under section 104 or 105 of the Assistive Technology Act of 1998 (29 U.S.C. 3003, 3004), relevant State agencies, and other community groups concerned with the welfare of individuals with developmental disabilities and their families.

(iii) That reflects the racial and ethnic diversity of the State;

(iv) That shall:

(A) Consult with the Director of the Center regarding the development of the five-year plan;

(B) Participate in an annual review of, and comment on, the progress of the Center in meeting the projected goals contained in the plan;

(C) Make recommendations to the Director of the Center regarding any proposed revisions of the plan that might be necessary; and

(v) Meet as often as necessary to carry out the role of the committee, but at a minimum twice during each grant year.

(6) To the extent possible, utilize the infrastructure and resources obtained through funds made available under the grant to leverage additional public and private funds to successfully achieve the projected goals developed in the five-year plan;

(7) Have a director with appropriate academic credentials, demonstrated leadership, expertise regarding developmental disabilities, significant experience in managing grants and contracts, and the ability to leverage public and private funds; and

(i) Allocate adequate staff time to carry out activities related to each of the core functions described in §1388.3.

(ii) [Reserved]

(8) Educate, and disseminate information related to the purpose of the DD Act of 2000 to the legislature of the State in which the Center is located, and to Members of Congress from such State.

(d) All applications submitted under this section shall be subject to technical and qualitative review by peer review groups as described under paragraph (d)(1) of this section.

(1) Each peer review group shall include such individuals with disabilities and parents, guardians, or advocates of or for individuals with developmental disabilities, as are necessary to carry out this section.

(2) [Reserved]

(e)(1) The Federal share of the cost of administration or operation of a Center, or the cost of carrying out a training initiative, supported by a grant made under subtitle D of the Act may not be more than 75 percent of the necessary cost of such project, as determined by the Secretary, or his or her designee.

(2) In the case of a project whose activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, as determined by the Secretary, or his or her designee, the Federal share of the cost of the project may not be more than 90 percent of the necessary costs of the project, as determined by the Secretary, or his or her designee.

§ 1328.6 Governance and administration.

(a) The UCEDD must be associated with, or an integral part of, a university and promote the independence, productivity, integration, and inclusion of individuals with developmental disabilities and their families.

(b) The UCEDD must have a written agreement or charter with the university, or affiliated university that specifies the UCEDD designation as an official university component, the relationships between the UCEDD and other university components, the university commitment to the UCEDD, and the UCEDD commitment to the university.

(c) Within the university, the UCEDD must maintain the autonomy and organizational structure required to carry out the UCEDD mission and provide for the mandated activities.

(d) The UCEDD Director must report directly to, or be, a University Administrator who will represent the interests of the UCEDD within the University.

(e) The University must demonstrate its support for the UCEDD through the commitment of financial and other resources.

(f) UCEDD senior professional staff, including the UCEDD Director, Associate Director, Training Director, and Research Coordinator, must hold faculty appointments in appropriate academic departments of the host or an affiliated university, consistent with university policy. UCEDD senior professional staff must contribute to the university by participation on university committees, collaboration with other university departments, and other university community activities.

(g) UCEDD faculty and staff must represent the broad range of disciplines and backgrounds necessary to implement the full inclusion of individuals with developmental disabilities in all aspects of society, consonant with the spirit of the Americans with Disabilities Act (ADA).

(h) The management practices of the UCEDD, as well as the organizational structure, must promote the role of the UCEDD as a bridge between the University and the community. The UCEDD must actively participate in

community networks and include a range of collaborating partners.

(i) The UCEDD's Consumer Advisory Committee must meet regularly. The membership of the Consumer Advisory Committee must reflect the racial and ethnic diversity of the State or community in which the UCEDD is located. The deliberations of the Consumer Advisory Committee must be reflected in UCEDD policies and programs.

(j) The UCEDD must maintain collaborative relationships with the SCDD and P&A. In addition, the UCEDD must be a permanent member of the SCDD and regularly participate in Council meetings and activities, as prescribed by the Act.

(k) The UCEDD must maintain collaborative relationships and be an active participant with the UCEDD network and individual organizations.

(l) The UCEDD must demonstrate the ability to leverage additional resources.

(m) The university must demonstrate that the UCEDD have adequate space to carry out the mandated activities.

(n) The UCEDD physical facility and all program initiatives conducted by the UCEDD must be accessible to individuals with disabilities as provided for by section 504 of the Rehabilitation Act and Titles II and III of the Americans with Disabilities Act.

(o) The UCEDD must integrate the mandated core functions into its activities and

programs and must have a written plan for each core function area.

(p) The UCEDD must have in place a long range planning capability to enable it to respond to emergent and future developments in the field.

(q) The UCEDD must utilize state-of-the-art methods, including the active participation of individuals, families and others of UCEDD programs and services to evaluate programs. The UCEDD must refine and strengthen its programs based on evaluation findings.

(r) The UCEDD Director must demonstrate commitment to the field of developmental disabilities, leadership, and vision in carrying out the mission of the UCEDD.

(s) The UCEDD must meet the ''Employment of Individuals with Disabilities'' requirements as described in section 107 of the Act.

§ 1328.7 Five-year plan and annual report.

(a) As required by section 154(a)(2) of the DD Act of 2000 (42 U.S.C. 15064), the application for core funding for a UCEDD shall describe a five-year plan, including a projected goal or goals related to one or more areas of emphasis for each of the core functions in section 153(a)(2) of the DD Act of 2000 (42 U.S.C.15063).

(1) For each area of emphasis under which a goal has been identified, the UCEDD must state in its application the measures of progress with the requirements of the law and applicable regulation, in accordance with current practice.

(2) If changes are made to the measures of progress established for a year, the five-year plan must be amended to reflect those changes and approved by AIDD upon review.

(3) By July 30 of each year, a UCEDD shall submit an Annual Report, using the system established or funded by AIDD. In order to be accepted by AIDD, an Annual Report must meet the requirements of section 154(e) of the Act (42 U.S.C. 15064) and, the applicable regulations, and include the information necessary for the Secretary, or his or her designee, to comply with section 105(1), (2), and (3) of the Act (42 U.S.C. 15005) and any other information requested by AIDD. The Report shall include information on progress made in achieving the UCEDD's goals for the previous year, including:

(i) The extent to which the goals were achieved;

(ii) A description of the strategies that contributed to achieving the goals;

(iii) The extent to which the goals were not achieved;

(iv) A detailed description of why goals were not met; and

(v) An accounting of the manner in which funds paid to the UCEDD for a fiscal year were expended.

(4) The Report also must include information on proposed revisions to the goals and a description of successful efforts to leverage funds, other than

funds under the Act, to pursue goals consistent with the UCEDD program.

(5) Each UCEDD must include in its Annual Report information on its achievement of the measures of progress.

(b) [Reserved]

PART 1330—NATIONAL INSTITUTE FOR DISABILITY, INDEPENDENT LIVING, AND REHABILITATION RESEARCH

Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

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1330.3 Definitions.
1330.4 Stages of research.
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Subpart B—Requirements for Awardees

1330.10 General requirements for awardees.
1330.11 Individuals with disabilities from minority backgrounds.

Subpart C—Selection of Awardees

1330.20 Peer review purpose.
1330.21 Peer review process.
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Subpart D—Disability, Independent Living, and Rehabilitation Research Fellowships

1330.30 Fellows program.

Subpart E—Special Projects and Demonstrations for Spinal Cord Injuries

1330.40 Spinal cord injuries program.

AUTHORITY: 29 U.S.C. 709, 3343.

SOURCE: 81 FR 29159, May 11, 2016, unless otherwise noted.

Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

§ 1330.1 General.

(a) The Disability, Independent Living, and Rehabilitation Research Projects and Centers Program provides grants to establish and support:

(1) The following Disability, Independent Living, and Rehabilitation Research and Related Projects:

(i) Disability, Independent Living, and Rehabilitation Research Projects;

(ii) Field-Initiated Projects;

(iii) Advanced Rehabilitation Research Training Projects; and

(2) The following Disability, Independent Living, and Rehabilitation Research Centers:

(i) Rehabilitation Research and Training Centers;

(ii) Rehabilitation Engineering Research Centers.

(b) The purpose of the Disability, Independent Living, and Rehabilitation Research Projects and Centers Program is to plan and conduct research, development, demonstration projects, training, dissemination, and related activities, including international activities, to:

(1) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, education, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(2) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq*.

§ 1330.2 Eligibility for assistance and other regulations and guidance.

(a) Unless otherwise stated in this part or in a determination by the NIDILRR Director, the following entities are eligible for an award under this program:

(1) States.

(2) Public or private agencies, including for-profit agencies.

(3) Public or private organizations, including for-profit organizations.

(4) Institutions of higher education.

(5) Indian tribes and tribal organizations.

(b) Other sources of regulation which may apply to awards under this part include but are not limited to:

(1) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(2) 45 CFR part 46—Protection of Human Subjects.

(3) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(4) 2 CFR parts 376 and 382—Nonprocurement Debarment and Suspension and Requirements for Drug-Free Workplace (Financial Assistance).

(5) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(6) 45 CFR part 81—Practice and Procedure for Hearings under part 80 of this title.

(7) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.

(8) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(9) 45 CFR part 87—Equal Treatment of Faith-Based Organizations.

(10) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(11) 45 CFR part 93—New Restrictions on Lobbying.

§ 1330.3 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Department of Health and Human Services.

(b) *Administrator* means the Administrator of the Administration for Community Living.

(c) *Director* means the Director of the National Institute on Disability, Independent Living, and Rehabilitation Research.

(d) *Research* is classified on a continuum from basic to applied:

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need.

(e) *Development activities* use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(f) *Products* encompass models, methods, tools, applications, and devices, but are not necessarily limited to these types.

§ 1330.4 Stages of research.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the application materials for the competition that the applicant identify the stage(s) of research in which it will focus the work of its proposed project or center. The four stages of research are:

(a) *Exploration and discovery* mean the stage of research that generates hypotheses or theories through new and refined analyses of data, producing observational findings and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities;

(b) *Intervention development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and

assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention;

(c) *Intervention efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. This stage of research may include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real-world applications; and

(d) *Scale-up evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but lacks a sufficient evidence base to demonstrate its effectiveness.

§ 1330.5 Stages of development.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the notice inviting applications for the competition that the applicant identify the stage(s) of development in which it will focus the work of its proposed project or center. The three stages of development are:

(a) *Proof of concept* means the stage of development where key technical challenges are resolved. Stage activities may include recruiting study participants, verifying product requirements; implementing and testing (typically in controlled contexts) key concepts, components, or systems, and resolving technical challenges. A technology transfer plan is typically developed and transfer partner(s) identified; and plan implementation may have started. Stage results establish that a product concept is feasible.

(b) *Proof of product* means the stage of development where a fully-integrated and working prototype, meeting critical technical requirements is created. Stage activities may include recruiting study participants, implementing and iteratively refining the prototype, testing the prototype in natural or less-controlled contexts, and verifying that all technical requirements are met. A technology transfer plan is typically ongoing in collaboration with the transfer partner(s). Stage results establish that a product embodiment is realizable.

(c) *Proof of adoption* means the stage of development where a product is substantially adopted by its target population and used for its intended purpose. Stage activities typically include completing product refinements; and continued implementation of the technology transfer plan in collaboration with the transfer partner(s). Other activities include measuring users' awareness of the product, opinion of the product, decisions to adopt, use, and retain products; and identifying barriers and facilitators impacting product adoption. Stage results establish that a product is beneficial.

Subpart B—Requirements for Awardees

§ 1330.10 General requirements for awardees.

(a) In carrying out a research activity under this program, an awardee must:

(1) Identify one or more hypotheses or research questions;

(2) Based on the hypotheses or research question identified, perform an intensive systematic study in accordance with its approved application directed toward:

(i) New or full scientific knowledge; or

(ii) Understanding of the subject or problem being studied.

(b) In carrying out a development activity under this program, an awardee must create, using knowledge and understanding gained from research, models, methods, tools, systems, materials, devices, applications, or standards that are adopted by and beneficial to the target population. Development activities span one or more stages of development.

(c) In carrying out a training activity under this program, an awardee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(d) In carrying out a demonstration activity under this program, an awardee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(e) In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(f) In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(g) In carrying out a technical assistance activity under this program, a grantee must provide expertise or information for use in problem-solving.

§ 1330.11 Individuals with disabilities from minority backgrounds.

(a) If the director so indicates in the application materials or elsewhere, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Subpart C—Selection of Awardees

§ 1330.20 Peer review purpose.

The purpose of peer review is to insure that:

(a) Those activities supported by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

§ 1330.21 Peer review process.

(a) The Director refers each application for an award governed by these regulations in this part to a peer review panel established by the Director.

(b) Peer review panels review applications on the basis of the applicable selection criteria in § 1330.23.

§ 1330.22 Composition of peer review panel.

(a) The Director selects as members of a peer review panel scientists and other experts in disability, independent living, rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) The scientific peer review process shall be conducted by individuals who are not Department of Health and Human Services employees.

(c) In selecting members to serve on a peer review panel, the Director may take into account the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider; the roles of potential panel members in those activities; and the quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

§ 1330.23 Evaluation process.

(a) The Director selects one or more of the selection criteria to evaluate an application:

(1) The Director establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to:

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; or

(2) The Director may use a combination of selection criteria established under paragraph (a)(1) of this section and selection criteria from § 1330.24 to evaluate a competition.

(3) For Field-Initiated Projects, the Director does not consider § 1330.24(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.

(b) In considering selection criteria in § 1330.24, the Director selects one or more of the factors listed in the criteria, but always considers the factor in § 1330.24(n) regarding members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) The maximum possible score for an application is 100 points.

(d) In the application package or a notice published in the FEDERAL REGISTER, the Director informs applicants of:

(1) The selection criteria chosen and the maximum possible score for each of the selection criteria; and

(2) The factors selected for considering the selection criteria and if points are assigned to each factor, the maximum possible score for each factor under each criterion. If no points are assigned to each factor, the Director evaluates each factor equally.

(e) For all instances in which the Director chooses to allow field-initiated research and development, the selection criteria in § 1330.25 will apply, including the requirement that the applicant must achieve a score of 85 percent or more of maximum possible points.

§ 1330.24 Selection criteria.

In addition to criteria established under § 1330.23(a)(1), the Director may select one or more of the following criteria in evaluating an application:

(a) *Importance of the problem.* In determining the importance of the problem, the Director considers one or more of the following factors:

(1) The extent to which the applicant clearly describes the need and target population.

(2) The extent to which the proposed activities further the purposes of the Rehabilitation Act.

(3) The extent to which the proposed activities address a significant need of individuals with disabilities.

(4) The extent to which the proposed activities address a significant need of rehabilitation service providers.

(5) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.

(6) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.

(7) The extent to which the proposed project will have beneficial impact on the target population.

(b) *Responsiveness to an absolute or competitive priority.* In determining the application's responsiveness to the application package or the absolute or competitive priority published in the FEDERAL REGISTER, the Director considers one or more of the following factors:

(1) The extent to which the applicant addresses all requirements of the absolute or competitive priority.

(2) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) *Design of research activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.

(2) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which:

(i) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;

(ii) Each research hypothesis or research question, as appropriate, is theoretically sound and based on current knowledge;

(iii) Each sample is drawn from an appropriate, specified population and is of sufficient size to address the proposed hypotheses or research questions, as appropriate, and to support the proposed data analysis methods;

(iv) The source or sources of the data and the data collection methods are appropriate to address the proposed hypotheses or research questions and to support the proposed data analysis methods;

(v) The data analysis methods are appropriate;

(vi) Implementation of the proposed research design is feasible, given the current state of the science and the time and resources available;

(vii) Input of individuals with disabilities and other key stakeholders is used to shape the proposed research activities; and

(viii) The applicant identifies and justifies the stage of research being proposed and the research methods associated with the stage.

(3) The extent to which anticipated research results are likely to satisfy the original hypotheses or answer the original research questions, as appropriate, and could be used for planning additional research, including generation of new hypotheses or research questions, where applicable.

(4) The extent to which the stage of research is identified and justified in the description of the research project(s) being proposed.

(d) *Design of development activities.* In determining the extent to which the project design is likely to be effective in accomplishing project objectives, the Director considers one or more of the following factors:

(1) The extent to which the proposed project identifies a significant need and a well-defined target population for the new or improved product;

(2) The extent to which the proposed project methodology is meritorious, including consideration of the extent to which:

(i) The proposed project shows awareness of the state-of-the-art for current, related products;

(ii) The proposed project employs appropriate concepts, components, or systems to develop the new or improved product;

(iii) The proposed project employs appropriate samples in tests, trials, and other development activities;

(iv) The proposed project conducts development activities in appropriate environment(s);

(v) Input from individuals with disabilities and other key stakeholders is obtained to establish and guide proposed development activities; and

(vi) The applicant identifies and justifies the stage(s) of development for the proposed project; and activities associated with each stage.

(3) The new product will be developed and tested in an appropriate environment.

(e) *Design of demonstration activities.* In determining the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(2) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(3) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(4) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(5) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) *Design of training activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(2) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(3) The extent to which the proposed training content:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If relevant, is based on new knowledge derived from research activities of the proposed project.

(4) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(5) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(6) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities.

(7) The extent to which the applicant is able to carry out the training activities, either directly or through another entity.

(8) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers.

(9) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers.

(10) The extent to which the type, extent, and quality of the proposed research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(11) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) *Design of dissemination activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the content of the information to be disseminated:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If appropriate, is based on new knowledge derived from research activities of the project.

(2) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(3) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(4) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(5) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) *Design of utilization activities.* In determining the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(2) The extent to which the utilization strategies are likely to be effective.

(3) The extent to which the information or technology is likely to be of use in other settings.

(i) *Design of technical assistance activities.* In determining the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(2) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(3) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(4) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) *Plan of operation.* In determining the quality of the plan of operation, the Director considers one or more of the following factors:

(1) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(2) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) *Collaboration.* In determining the quality of collaboration, the Director considers one or more of the following factors:

(1) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(2) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(3) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(l) *Adequacy and reasonableness of the budget.* In determining the adequacy and the reasonableness of the proposed budget, the Director considers one or more of the following factors:

(1) The extent to which the costs are reasonable in relation to the proposed project activities.

(2) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(3) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) *Plan of evaluation.* In determining the quality of the plan of evaluation, the Director considers one or more of the following factors:

(1) The extent to which the plan of evaluation provides for periodic assessment of progress toward:

(i) Implementing the plan of operation; and

(ii) Achieving the project's intended outcomes and expected impacts.

(2) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(3) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that:

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(ii) Are objective, and quantifiable or qualitative, as appropriate.

(n) *Project staff.* In determining the quality of the project staff, the Director considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Director considers one or more of the following:

(1) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(2) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(3) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(4) The extent to which the project staff includes outstanding scientists in the field.

(5) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) *Adequacy and accessibility of resources.* In determining the adequacy and accessibility of the applicant's resources to implement the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(2) The quality of an applicant's past performance in carrying out a grant.

(3) The extent to which the applicant has appropriate access to populations and organizations representing individuals with disabilities to support advanced disability, independent living and clinical rehabilitation research.

(4) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(p) *Quality of the project design.* In determining the quality of the design of the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The quality of the methodology to be employed in the proposed project.

(3) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(4) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(5) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(6) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(7) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(8) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

§ 1330.25 Additional considerations for field-initiated priorities.

(a) The Director reserves funds to support field-initiated applications funded under this part when those applications have been awarded points totaling 85 percent or more of the maximum possible points under the procedures described in § 1330.23.

(b) In making a final selection from applications received when NIDILRR uses field-initiated priorities, the Director may consider whether one of the following conditions is met and, if so, use this information to fund an application out of rank order:

(1) The proposed project represents a unique opportunity to advance rehabilitation and other knowledge to improve the lives of individual with disabilities.

(2) The proposed project complements or balances research activity already planned or funded by NIDILRR through its annual priorities or addresses the research in a new and promising way.

(c) If the Director funds an application out of rank order under paragraph (b) of this section, the public will be notified through a notice on the NIDILRR Web site or through other means deemed appropriate by the Director.

Subpart D—Disability, Independent Living, and Rehabilitation Research Fellowships

§ 1330.30 Fellows program.

(a) The purpose of this program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on rehabilitation, independent living, and other experiences and outcomes of individuals with disabilities.

(b) The eligibility requirements for the Fellows program are as follows:

(1) Only individuals are eligible to be recipients of Fellowships.

(2) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to rehabilitation and independent living for individuals with disabilities.

(3) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(i) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to disability and rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(ii) The Director awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

(c) Fellowships will be awarded in the form of a grant to eligible individuals.

(d) In making a final selection of applicants to support under this program, the Director considers the extent to which applicants present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the Institute's Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

Subpart E—Special Projects and Demonstrations for Spinal Cord Injuries

§ 1330.40 Spinal cord injuries program.

(a) This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, independent living, and rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(b) The agencies and organizations eligible to apply under this program are described in § 1330.2.

PART 1331—STATE HEALTH INSURANCE ASSISTANCE PROGRAM

Sec.
1331.1 Basis, scope, and definition.
1331.2 Eligibility for grants.
1331.3 Availability of grants.
1331.4 Number and size of grants.
1331.5 Limitations.
1331.6 Reporting requirements.
1331.7 Administration.

AUTHORITY: 42 U.S.C. 1395b–4.

SOURCE: 81 FR 5918, Feb. 4, 2016, unless otherwise noted.

§ 1331.1 Basis, scope, and definition.

(a) *Basis.* This part implements, in part, the provisions of section 4360 of Public Law 101–508 by establishing a minimum level of funding for grants made to States for the purpose of providing information, counseling, and assistance relating to obtaining adequate and appropriate health insurance coverage to individuals eligible to receive benefits under the Medicare program.

(b) *Scope of part.* This part sets forth the following:

(1) Conditions of eligibility for the grant.

(2) Minimum levels of funding for those States qualifying for the grants.

(3) Reporting requirements.

(c) *Definition.* For purposes of this subpart, the term ''State'' includes (except where otherwise indicated by the context) the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 1331.2 Eligibility for grants.

To be eligible for a grant under this subpart, the State must have an approved Medicare supplemental regulatory program under section 1882 of the Act and submit a timely application to ACL that meets the requirements of—

(a) Section 4360 of Public Law 101–508 (42 U.S.C. 1395b–4);

(b) This subpart; and

(c) The applicable solicitation for grant applications issued by ACL.

§ 1331.3 Availability of grants.

ACL awards grants to States subject to availability of funds, and if applicable, subject to the satisfactory progress in the State's project during the preceding grant period. The criteria by which progress is evaluated and the performance standards for determining whether satisfactory progress has been made are specified in the terms and conditions included in the notice of grant award sent to each State. ACL advises each State as to when to make application, what to include in the application, and provides information as to the timing of the grant award and the duration of the grant award. ACL also provides an estimate of the amount of funds that may be available to the State.

§ 1331.4 Number and size of grants.

(a) *General.* For available grant funds, up to and including $10,000,000, grants will be made to States according to the terms and formula in paragraphs (b) and (c) of this section. For any available grant funds in excess of $10,000,000, distribution of grants will be at the discretion of ACL, and will be made according to criteria that ACL will communicate to the States via grant solicitation. ACL will provide information to each State as to what must be included in the application for grant funds. ACL awards the following type of grants:

(1) New program grants.

(2) Existing program enhancement grants.

(b) *Grant award.* Subject to the availability of funds, each eligible State that submits an acceptable application receives a grant that includes a fixed amount (minimum funding level) and a variable amount.

(1) A fixed portion is awarded to States in the following amounts:

(i) Each of the 50 States, $75,000.

(ii) The District of Columbia, $75,000.

(iii) Puerto Rico, $75,000.

(iv) American Samoa, $25,000.

(v) Guam, $25,000.

(vi) The Virgin Islands, $25,000.

(2) A variable portion which is based on the number and location of Medicare beneficiaries residing in the State is awarded to each State. The variable amount a particular State receives is determined as set forth in paragraph (c) of this section.

(c) *Calculation of variable portion of the grant.* (1) ACL bases the variable portion of the grant on—

(i) The amount of available funds, and

(ii) A comparison of each State with the average of all of the States (except the State being compared) with respect to three factors that relate to the size of the State's Medicare population and where that population resides.

(2) The factors ACL uses to compare States' Medicare populations comprise separate components of the variable amount. These factors, and the extent to which they each contribute to the variable amount, are as follows:

(i) Approximately 75 percent of the variable amount is based on the number of Medicare beneficiaries living in the State as a percentage of all Medicare beneficiaries nationwide.

(ii) Approximately 10 percent of the variable amount is based on the percentage of the State's total population who are Medicare beneficiaries.

(iii) Approximately 15 percent of the variable amount is based on the percentage of the State's Medicare beneficiaries that reside in rural areas (''rural areas'' are defined as all areas not included within a metropolitan Statistical Area).

(3) Based on the foregoing four factors (that is, the amount of available funds and the three comparative factors), ACL determines a variable rate for each participating State for each grant period.

(d) *Submission of revised budget.* A State that receives an amount of grant funds under this subpart that differs from the amount requested in the budget submitted with its application must submit a revised budget to ACL, along with its acceptance of the grant award, which reflects the amount awarded.

§ 1331.5 Limitations.

(a) *Use of grants.* Except as specified in paragraph (b) of this section, and in the terms and conditions in the notice of grant award, a State that receives a grant under this subpart may use the grant for any reasonable expenses for planning, developing, implementing and/or operating the program for which the grant is made as described in the solicitation for application for the grant.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (that is, an existing program enhancement grant)—

(1) Must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the initial award of a grant made under this subpart and funded through other sources (including in-kind contributions).

(2) Must maintain the activities of the program at least at the level that those activities were conducted immediately preceding the initial award of a grant made under this subpart.

§ 1331.6 Reporting requirements.

A State that receives a grant under this subpart must submit at least one annual report to ACL and any additional reports as ACL may prescribe in the notice of grant award. ACL advises the State of the requirements concerning the frequency, timing, and contents of reports in the notice of grant award that it sends to the State.

§ 1331.7 Administration.

(a) *General.* Administration of grants will be in accordance with the provisions of this subpart, 45 CFR part 75 (''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''), the terms of the solicitation, and the terms of the notice of grant award. Except for the minimum funding levels established by § 1331.4(b)(1), in the event of conflict between a provision of the notice of grant award, any provision of the solicitation, or of any regulation enumerated in 45 CFR part 75, the terms of the notice of grant award control.

(b) *Notice.* ACL provides notice to each applicant regarding ACL's decision on an application for grant funding under § 1331.4.

(c) *Appeal.* Any applicant for a grant under this subpart has the right to appeal ACL's determination regarding its application. Appeal procedures are governed by the regulations at 45 CFR part 16 (Procedures of the Departmental Grant Appeals Board).

SUBCHAPTER D—THE ADMINISTRATION FOR NATIVE AMERICANS, NATIVE AMERICAN PROGRAMS

PART 1336—NATIVE AMERICAN PROGRAMS

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AUTHORITY: 42 U.S.C. 2991 *et seq.*

SOURCE: 48 FR 55821, Dec. 15, 1983, unless otherwise noted.

Subpart A—Definitions

§ 1336.10 Definitions.

For the purposes of this part, unless the context otherwise requires:

Act means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 *et seq.*).

Alaskan Native means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

American Indian or Indian means any individual who is a member or a descendant of a member of a North American tribe, band, Pueblo or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group, band, or community of which he or she claims to be a member.

ANA means the Administration for Native Americans within the Office of Human Development Services.

Applicant means an organization which has applied for financial assistance from ANA.

Budget period means the interval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Economic and social self-sufficiency means the ability of Native Americans to define and achieve their own economic and social goals.

Indian tribe means a distinct political community of Indians which exercises powers of self-government.

Native American means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in the Act, or in this section.

Project period means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds, satisfactory progress, and a determination by HHS that continued funding is in the best interest of the Government.

Recipient means an organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

Subpart B—Purpose of the Native American Programs

§ 1336.20 Program purpose.

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Native American Projects

§ 1336.30 Eligibility under sections 804 and 805 of the Native American Programs Act of 1974.

Financial assistance under sections 804 and 805 may be made to public or private agencies including ''for-profit'' organizations.

[48 FR 55821, Dec. 15, 1983, as amended at 53 FR 23968, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989; 61 FR 42820, Aug. 19, 1996]

§ 1336.31 Project approval procedures.

(a) Each applicant for financial assistance under section 803 of the Act must submit a work plan that falls within the statutory requirements of the Act and meets the criteria of program announcements published by ANA in the FEDERAL REGISTER. If the proposed project extends beyond one year, a work plan must be submitted for the period of time specified by the Commissioner in the Program Announcement. ANA will determine whether to approve all, part, or none of the requested work plan. Proposed changes to the approved work plan must receive the written approval of ANA prior to implementation by the recipient.

(b) ANA will negotiate the approved project goals, objectives, work plan, and the funding level for each budget period with each recipient.

(c) The evaluation for the purpose of making an approval decision on each proposed work plan will take into account the proposal's conformance with ANA program purposes and the recipient's past performance and accomplishments.

(d) Financial assistance awarded under section 803 may be renewed by ANA to grantees based on acceptable work plans and past performance.

(Approved by the Office of Management and Budget under control number 0980–0016)

§ 1336.32 Grants.

Generally, financial assistance will be made available for a one-year budget period and subsequent non-competing continuation awards with the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, with the same project period, but the continuation application need only contain budget and a summary progress report.

§ 1336.33 Eligible applicants and proposed activities which are ineligible.

(a) Eligibility for the listed programs is restricted to the following specified categories of organizations. In addition, applications from tribal components which are tribally-authorized divisions of a larger tribe must be approved by the governing body of the Tribe. If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served.

(1) Social and Economic Development Strategies (SEDS) and Preservation and Enhancement of Native American Languages:

(i) Federally recognized Indian Tribes;

(ii) Consortia of Indian Tribes;

(iii) Incorporated non-Federally recognized Tribes;

(iv) Incorporated nonprofit multi-purpose community-based Indian organizations;

(v) Urban Indian Centers;

(vi) National and regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

(vii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(viii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(ix) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

(x) Nonprofit Native organizations in Alaska with village specific projects;

(xi) Public and nonprofit private agencies serving Native Hawaiians;

(xii) Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);

(xiii) Tribally Controlled Community Colleges Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders; and

(xiv) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional councils) as recognized by the Bureau of Indian Affairs.

(Statutory authority: Sections 803(a) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991 b(a) and 42 U.S.C. 2991b–3)

(2) Alaska-Specific Social and Economic Development Strategies (SEDS) Projects:

(i) Federally recognized Indian Tribes in Alaska;

(ii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

(iii) Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

(iv) Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and

(v) Nonprofit Native organizations in Alaska with village specific projects.

(3) Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Tribes;

(iii) Nonprofit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act (IRA) or traditional councils) as recognized by the Bureau of Indian Affairs.

(iv) Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; and

(v) Other tribal or village organizations or consortia of Indian Tribes. (Statutory authority: § 8094A of the Department of Defense Appropriations Act, 1994 (Public Law 103–139), § 8094A of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991h(b)).

(4) Improvement of the capability of tribal governing bodies to regulate environmental quality:

(i) Federally recognized Indian Tribes;

(ii) Incorporated non-Federally and State recognized Indian tribes;

(iii) Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or nonprofit village consortia;

(iv) Nonprofit Alaska Native Regional Corporations/Associations with village-specific projects;

(v) Other tribal or village organizations or consortia of Indian tribes: and

(vi) Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs. (Statutory authority: Sections 803(d) of the Native Americans Programs Act of 1974, as amended 42 U.S.C. 2991b(d).)

(b) The following is a nonexclusive list of activities that are ineligible for funding under programs authorized by the Native American Programs Act of 1974:

(1) Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable;

(2) Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS long-range development plan;

(3) The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs;

(4) Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions; however, for Competitive Area 2, Alaska-Specific SEDS Projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place;

(5) The conduct of activities which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development);

(6) Proposals from consortia of tribes that are not specific with regard to support from, and roles of member tribes. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member tribes also receive funding from ANA; and

(7) The purchase of real estate. (Statutory authority: Sections 803B of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–2)

[61 FR 42820, Aug. 19, 1996]

§ 1336.34 Notice of ineligibility.

(a) Upon a finding by the Commissioner that an organization which has applied for funding is ineligible or that the activities proposed by an organization are ineligible, the Commissioner shall inform the applicant by certified letter of the decision.

(b) The letter must include the following:

(1) The legal and factual grounds for the Commissioner's finding concerning eligibility;

(2) A copy of the regulations in this part; and

(3) The following statement: This is the final decision of the Commissioner, Administration for Native Americans. It shall be the final decision of the Department unless, within 30 days after receiving this decision as provided in §810(b) of the Native Americans Programs Act of 1974, as amended, and 45 CFR part 1336, you deliver or mail (you should use registered or certified mail to establish the date) a written notice of appeal to the HHS Departmental Appeals Board, 200 Independence Avenue, S.W., Washington, D.C. 20201. You shall attach to the notice a copy of this decision and note that you intend an appeal. The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position. We are enclosing a copy of 45

CFR part 1336 which governs the conduct of appeals under §810(b). For additional information on the appeals process see 45 CFR 1336.35. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42821, Aug. 19, 1996]

§ 1336.35 Appeal of ineligibility.

The following steps apply when seeking an appeal on a finding of ineligibility for funding:

(a) An applicant, which has had its application rejected either because it has been found ineligible or because the activities it proposes are ineligible for funding by the Commissioner of ANA, may appeal the Commissioner's ruling to the HHS Departmental Appeals Board, in writing, within 30 days following receipt of ineligibility notification.

(b) The appeal must clearly identify the issue(s) in dispute and contain a statement of the applicant's position on such issue(s) along with pertinent facts and reasons in support of the position.

(c) Upon receipt of appeal for reconsideration of a rejected application or activities proposed by an applicant, the Departmental Appeals Board will notify the applicant by certified mail that the appeal has been received.

(d) The applicant's request for reconsideration will be reviewed by the Departmental Appeals Board in accordance with 45 CFR part 16, except as otherwise provided in this part.

(e) The Commissioner shall have 45 days to respond to the applicant's submission under paragraph (a) of this section.

(f) The applicant shall have 20 days to respond to the Commissioner's submission and the parties may be requested to submit additional information within a specified time period before closing the record in the appeal.

(g) The Departmental Appeals Board will review the record in the appeal and provide a final written decision within 30 days following the closing of the record, unless the Board determines for good reason that a decision cannot be issued within this time period and so notifies the parties.

(h) If the Departmental Appeals Board determines that the applicant is eligible or that the activities proposed by the applicant are eligible for funding, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration for Native Americans. (Statutory authority: Sections 810(b) of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991h(b).)

[61 FR 42822, Aug. 19, 1996]

Subpart D—Evaluation

§ 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

(Approved by the Office of Management and Budget under control numbers 0980–0155 and 0980–0144)

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearing under part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from HHS.

(b) *Cost sharing or matching*—(1) *Policy*. Recipients of financial assistance under sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project.

This requirement may be waived in accordance with the criteria in §1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application*. If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with is application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria*. Both of the following criterial must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or inkind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

(4) *Approval*. For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort*. (1) Applications for financial assistance under this Part must include either a statement of compliance with the maintenance of effort requirement contained in section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purposes of this part.

(d) *Delegation of project operations*. (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation must be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant must submit a budget for each delegate agency as part of its application.

(e) *Unallowable costs*. ANA funds may not be used by recipients to purchase real property.

(f) *Office of the Chief Executive*. The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in §75.2 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this part.

[48 FR 55821, Dec. 15, 1983, as amended at 81 FR 3022, Jan. 20, 2016]

§ 1336.51 Project period.

The Notice of Financial Assistance Awarded will specify the period for which support is intended, although the Department makes funding commitments only for one budget period at a time. Financial assistance under section 803 of the Act may be ongoing, subject to policy decisions and funding limitations.

§ 1336.52 Appeals.

(a) *Right to appeal.* Recipients whose financial assistance has been suspended or terminated, or whose non-competing continuation applications for refunding have been denied, may appeal such decisions using the procedures described in this section. Denial of an application for refunding means the refusal to fund a non-competing continuation application for a budget period within a previously approved project period.

(b) *Suspension, termination, and denial of funding.* Procedures for and definitions of suspension and termination of financial assistance are published in 45 CFR 75.371 through 75.380. Appeals from a denial of refunding will be treated the same procedurally as appeals to termination of financial assistance. The term ''denial of refunding'' does not include policy decisions to eliminate one or more activities of an approved project. A decision not to fund an application at the end of the recipients's project period is not a ''denial of refunding'' and is not subject to appeal.

(c) *Hearings.* (1) A recipient shall be given an initial written notice at least thirty (30) days prior to the suspension or termination of financial assistance except in emergency situations, which occur when Federal property is in imminent danger of dissipation, or when life, health, or safety is endangered. During this period of time, the recipient has the opportunity to show cause to ANA why such action should not be taken.

(2) A recipient who has received final written notice of termination or denial of refunding, or whose financial assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board.

[48 FR 55821, Dec. 15, 1983, as amended at 81 FR 3022, Jan. 20, 2016]

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

AUTHORITY: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, *et seq.*).

SOURCE: 53 FR 23969, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989, unless otherwise noted.

§ 1336.60 Purpose of this subpart.

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

§ 1336.61 Purpose of the Revolving Loan Fund.

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

(a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;

(b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-

sector participation in local economic development activities; and

(c) Increase capital formation and private-sector jobs for Native Hawaiians. (section 803A(a)(1)(A))

§ 1336.62 Definitions.

Applicant means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the applicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

Commissioner means the Commissioner of the Administration for Native Americans.

Cooperative association means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the convenants, obligations or other provisions of a loan agreement.

Economic enterprise means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

Financing statement means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

Loan Administrator means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

Mortgages mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

Native Hawaiian means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Partnership means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state or Federal law.

Profits mean the net income earned after deducting operating expenses from operating revenues.

Revolving Loan Fund (RLF) means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to section 803A of the Native American Programs Act of 1974, as amended.

§ 1336.63 General responsibilities of the Loan Administrator.

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

(1) Goals and strategies;

(2) Staffing and organizational responsibilities;

(3) Preapplication and loan screening processes;

(4) Loan procedures including application forms;

(5) Criteria and procedures for loan review, evaluation and decision-making;

(6) Loan closing procedures; and

(7) Procedures for loan servicing, monitoring and provision of technical assistance.

(c) The Loan Administrator will set up fiscal management procedures to satisfy the requirements of section 803A of the Native American Programs Act and this subpart.

(d) The Loan Administrator must set up a separate account for the RLF into which all payments, interest, charges, and other amounts collected from loans made from the RLF will be deposited.

§ 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.

(a) Prior to the approval of any direct loan under the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for a clear and comprehensive set of goals and strategies for the RLF. The goals will specify the results the Loan Administrator expects to accomplish from the Revolving Loan Fund, define the RLF's role and responsibilities for potential users, and serve as the basis for the development of an organizational strategy and operating plan. The RLF strategies will provide the Loan Administrator with a sound understanding of the economic and market conditions within the Native Hawaiian community.

(b) The following factors shall be considered by the Loan Administrator in developing the RLF's goals:

(1) Employment needs of the local population;

(2) Characteristics of the local economic base;

(3) Characteristics of the local capital base and the gaps in the local availability of business capital;

(4) Local resources for economic development and their availability; and

(5) Goals and strategies of other local organizations involved in economic development.

(c) The loan fund strategies developed by the Revolving Loan Fund must include the following:

(1) *Business Targeting Strategy:* to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy:* to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy:* to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy:* to generate applications from potential borrowers and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy:* to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy:* to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

§ 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

§ 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the

Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures*. Some factors to be considered in the loan screening process are:

(1) General eligibility criteria;

(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process*. The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures*. The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process*. Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process*. The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents*. Documents used in the loan closing process include:

(1) *Term Sheet:* an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda:* an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring*. The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections:* To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring:* To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor*. The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests*. Security interests which may be taken by the lender include, but are not limited to, liens on

real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured.* Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals.* Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security.* The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (section 803A(c) (1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF–269, Financial Status Report, or any equivalent report required by the Department.

§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (section 803A(d)(1)(B))

§ 1336.71 Administrative costs.

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (sections 803A(a)(2) and 803A(d)(1)(A))

§ 1336.72 Fiscal requirements.

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the RLF after November 29, 1992, the close of the five-year period of the demonstration project. (section 803A(b)(6))

(d) All monies that are in the revolving loan fund on November 29, 1992 and that are not otherwise needed (as determined by the Commissioner) to carry out the provisions of this subpart must be deposited in the Treasury of the United States as miscellaneous receipts. The Commissioner will make this determination based on reports,

audits and other appropriate documents as determined by the Commissioner. The Commissioner will take into consideration the costs necessary to collect loans outstanding beyond November 29, 1992, which costs may be paid from interest and loan charges collected by the Fund and in the Fund as of November 29, 1992. To use monies in the Fund for the costs of collection after November 29, 1992, the Commissioner must give prior approval for such use.

(e) All monies deposited in the revolving loan fund after November 29, 1992 must be deposited in the Treasury of the United States as miscellaneous receipts.

(f) After November 29, 1992, the Loan Administrator will assume responsibility for the collection of all outstanding loans without additional financial assistance from ANA.

§ 1336.73 Eligible borrowers.

(a) Loans may be made to eligible applicants only if the Loan Administrator determines that the applicant is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Small Business Administration, Production Credit Associations, Federal Land Banks; and

(b) Only if there is a reasonable prospect that the borrower will repay the loan. (section 803A(b)(1) (A) and (B))

(c) The Loan Administrator will determine an applicant's inability to obtain financing elsewhere on reasonable terms and conditions from documentation provided by the applicant.

(d) Those eligible to receive loans from the revolving loan fund are:

(1) Native Hawaiian individuals.

(2) Native Hawaiian non-profit organizations.

(3) Native Hawaiian businesses.

(4) Native Hawaiian cooperative associations.

(5) Native Hawaiian partnerships.

(6) Native Hawaiian associations.

(7) Native Hawaiian corporations.

§ 1336.74 Time limits and interest on loans.

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (section 803A(b)(2) (A) and (B))

§ 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

(a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;

(b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;

(c) Business or job retention;

(d) Small business development;

(e) Private sector job creation; and

(f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

§ 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

(a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (section 803A(b)(5));

(b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which directly benefit these individuals, or persons related to them by marriage, or law.

(c) Eligible activities which are moved from the State of Hawaii;

(d) Investing in high interest account, certificates of deposit or other investments;

(e) Relending of the loan amount by the borrower;

(f) The purchase of land or buildings;

(g) The construction of buildings; and

(h) Purchasing or financing equity in private businesses.

§ 1336.77 Recovery of funds.

(a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as ''costs'') under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR part 75, subpart E, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR part 75 and will notify the Loan Administrator of its appeal rights, which appeal must be taken pursuant to 45 CFR part 16.

(c) If a disallowance is taken and not appealed, or if it is appealed and the disallowance is upheld by the Departmental Grant Appeals Board, the Loan Administrator must repay the disallowed amount to the Loan Fund within 30 days, such repayment to be made with non-Federal funds.

[53 FR 23969, June 24, 1988; 53 FR 28223, July 27, 1988; 54 FR 3452, Jan. 24, 1989, as amended at 81 FR 3022, Jan. 20, 2016]

SUBCHAPTER E—[RESERVED]

SUBCHAPTER F—THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, FAMILY AND YOUTH SERVICES BUREAU

PART 1351—RUNAWAY AND HOMELESS YOUTH PROGRAM

Subpart A—Definition of Terms

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1351.1 Significant terms.

Subpart B—Runaway and Homeless Youth Program Grant

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1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?
1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?
1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth Program grant?
1351.14 What is the period for which a grant will be awarded?
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1351.17 How is application made for a Runaway and Homeless Youth Program grant?
1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?
1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

Subpart C—Additional Requirements

1351.20 What are the additional requirements under a Runaway and Homeless Youth Program grant?

AUTHORITY: 42 U.S.C. 5701.

SOURCE: 43 FR 55635, Nov. 28, 1978, unless otherwise noted.

Subpart A—Definition of Terms

§ 1351.1 Significant terms.

For the purposes of this part:

(a) *Aftercare services* means the provision of services to runaway or otherwise homeless youth and their families, following the youth's return home or placement in alternative living arrangements which assist in alleviating the problems that contributed to his or her running away or being homeless.

(b) *Area* means a specific neighborhood or section of the locality in which the runaway and homeless youth project is or will be located.

(c) *Coordinated networks of agencies* means an association of two or more private agencies, whose purpose is to develop or strengthen services to runaway or otherwise homeless youth and their families.

(d) *Counseling services* means the provision of guidance, support and advice to runaway or otherwise homeless youth and their families designed to alleviate the problems which contributed to the youth's running away or being homeless, resolve intrafamily problems, to reunite such youth with their families, whenever appropriate, and to help them decide upon a future course of action.

(e) *Demonstrably frequented by or reachable* means located in an area in which runaway or otherwise homeless youth congregate or an area accessible to such youth by public transportation or by the provision of transportation by the runaway and homeless youth project itself.

(f) *Homeless youth* means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care.

(g) *Juvenile justice system* means agencies such as, but not limited to juvenile courts, law enforcement, probation, parole, correctional institutions, training schools, and detention facilities.

(h) *Law enforcement structure* means any police activity or agency with legal responsibility for enforcing a criminal code including, police departments and sheriffs offices.

(i) *A locality* is a unit of general government—for example, a city, county, township, town, parish, village, or a

combination of such units. Federally recognized Indian tribes are eligible to apply for grants as local units of government.

(j) *Runaway and homeless youth project* means a locally controlled human service program facility outside the law enforcement structure and the juvenile justice system providing temporary shelter, either directly or through other facilities, counseling and aftercare services to runaway or otherwise homeless youth.

(k) *Runaway youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of his or her family.

(l) *Short-term training* means the provision of local, State, or regionally based instruction to runaway or otherwise homeless youth service providers in skill areas that will directly strengthen service delivery.

(m) *A State* includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(n) *Technical assistance* means the provision of expertise or support for the purpose of strengthening the capabilities of grantee organizations to deliver services.

(o) *Temporary shelter* means the provision of short-term (maximum of 15 days) room and board and core crisis intervention services, on a 24-hour basis, by a runaway and homeless youth project.

[43 FR 55635, Nov. 28, 1978, as amended at 54 FR 20854, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

Subpart B—Runaway and Homeless Youth Program Grant

§ 1351.10 What is the purpose of the Runaway and Homeless Youth Program grant?

The purpose of the Runaway and Homeless Youth Program grant is to establish or strengthen existing or proposed community-based runaway and homeless youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling and aftercare services. The Department is concerned about the increasing numbers of youth who leave, and stay away from, their homes without permission of their families. There is also national concern about runaway and homeless youth who have no resources, who live on the street, and who represent law enforcement problems in the communities to which they run. The problems of runaway or otherwise homeless youth should not be the responsibility of already overburdened police departments and juvenile justice authorities. Rather, Congress intends that the responsibility for locating, assisting, and returning such youth should be placed with low-cost, community-based human service programs.

§ 1351.11 Who is eligible to apply for a Runaway and Homeless Youth Program grant?

States localities, private entities, and coordinated networks of such entities are eligible to apply for a Runaway and Homeless Youth Program grant unless they are part of the law enforcement structure or the juvenile justice system.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.12 Who gets priority for the award of a Runaway and Homeless Youth Program grant?

In making Runaway and Homeless Youth Program grants, HHS gives priority to those private agencies which have had past experience in dealing with runaway or otherwise homeless youth. HHS also gives priority to applicants whose total grant requests for services to runaway or otherwise homeless youth are less than $100,000 and whose project budgets, considering all funding sources, are smaller than $150,000. Past experience means that a major activity of the agency has been the provision of temporary shelter, counseling, and referral services to runaway or otherwise homeless youth and their families, either directly or through linkages established with other community agencies.

§ 1351.13 What are the Federal and non-Federal match requirements under a Runaway and Homeless Youth grant?

HHS requires a non-Federal share which is equal to at least 10 percent of the Federal funds that will be received under this grant program for any fiscal year.

[54 FR 20855, May 15, 1989; 55 FR 5601, Feb. 16, 1990]

§ 1351.14 What is the period for which a grant will be awarded?

(a) The initial notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed five years.

(b) Generally the grant will initially be for one year. A grantee must submit a separate application to have the support continued for each subsequent year. Continuation awards within the project period will be made provided the grantee has made satisfactory progress, funds are available, and HHS determines that continued funding is in the best interest of the Government.

[43 FR 55635, Nov. 28, 1978, as amended at 65 FR 50141, Aug. 17, 2000]

§ 1351.15 What costs are supportable under a Runaway and Homeless Youth Program grant?

Costs which can be supported include, but are not limited to, temporary shelter, referral services, counseling services, aftercare services, and staff training. Costs for acquisition and renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need.

§ 1351.16 What costs are not allowable under a Runaway and Homeless Youth Program grant?

A Runaway and Homeless Youth Program grant does not cover the cost of constructing new facilities.

§ 1351.17 How is application made for a Runaway and Homeless Youth Program grant?

HHS publishes annually in the FEDERAL REGISTER a program announcement of grant funds available under the Runaway and Homeless Youth Program Act. The program announcement states the amount of funds available, program priorities for funding, and criteria for evaluating applications in awarding grants. The announcement also describes specific procedures for receipt and review of applications. An applicant should:

(a) Obtain a program announcement from the FEDERAL REGISTER or from one of HHS's 10 Regional Offices in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle;

(b) Obtain an application package from one of HHS's Regional Offices; and

(c) Submit a completed application to the Grants Management Office at the appropriate Regional Office.

[43 FR 55635, Nov. 28, 1978, as amended at 48 FR 29202, June 24, 1983]

§ 1351.18 What criteria has HHS established for deciding which Runaway and Homeless Youth Program grant applications to fund?

In reviewing applications for a Runaway and Homeless Youth Program grant, HHS takes into consideration a number of factors, including:

(a) Whether the application meets one or more of the program's funding priorities; (see § 1351.12)

(b) The need for Federal support based on the number of runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is or will be located;

(c) The availability of services to runaway or otherwise homeless youth in the area in which the runaway and homeless youth project is located;

(d) Whether there is a minimum residential capacity of four and a maximum residential capacity not to exceed 20 youth with a ratio of staff to youth sufficient to assure adequate supervision and treatment;

(e) Plans for meeting the best interests of the youth involving, when possible, both the youth and the family.

These must include contacts with the families. This contact should be made within 24 hours, but must be made no more than 72 hours following the time of the youth's admission into the runaway and homeless youth project. The plans must also include assuring the youth's safe return home or to local government officials or law enforcement officials and indicate efforts to provide appropriate alternative living arrangements.

(f) Plans for the delivery of aftercare or counseling services to runaway or otherwise homeless youth and their families;

(g) Whether the estimated cost to the Department for the runaway and homeless youth project is reasonable considering the anticipated results;

(h) Whether the proposed personnel are well qualified and the applicant agency has adequate facilities and resources;

(i) Whether the proposed project design, if well executed, is capable of attaining program objectives;

(j) The consistency of the grant application with the provisions of the Act and these regulations.

§ 1351.19 What additional information should an applicant or grantee have about a Runaway and Homeless Youth Program grant?

(a) Several other HHS rules and regulations apply to applicants for or recipients of Runaway and Homeless Youth Program grants. These include:

(1) The provisions of 45 CFR part 74 pertaining to the Administration of Grants;

(2) The provisions of 45 CFR part 16, Departmental Grants Appeal Process, and the provisions of Informal Grant Appeal Procedures (Indirect Costs) in volume 45 CFR part 75;

(3) The provisions of 45 CFR part 80 and 45 CFR part 81 pertaining to nondiscrimination under programs receiving Federal assistance, and hearing procedures;

(4) The provisions of 45 CFR part 84 pertaining to discrimination on the basis of handicap;

(5) The provisions of 45 CFR part 46 pertaining to protection of human subjects.

(b) Several program policies regarding confidentiality of information, treatment, conflict of interest and State protection apply to recipients of Runaway and Homeless Youth Program grants. These include:

(1) *Confidential information.* All information including lists of names, addresses, photographs, and records of evaluation of individuals served by a runaway and homeless youth project shall be confidential and shall not be disclosed or transferred to any individual or to any public or private agency without written consent of the youth and family. Youth served by a runaway and homeless youth project shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the training of project staff in the protection of these rights and for the secure storage of records.

(2) *Medical, psychiatric or psychological treatment.* No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth and family unless otherwise permitted by State law.

(3) *Conflict of interest.* Employees or individuals participating in a program or project under the Act shall not use their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

(4) *State law protection.* HHS policies regarding confidential information and experimentation and treatment shall not apply if HHS finds that State law is more protective of the rights of runaway or otherwise homeless youth.

(c) Nothing in the Runaway and Homeless Youth Act or these regulations gives the Federal Government control over the staffing and personnel decisions regarding individuals hired by a runaway and homeless youth project receiving Federal funds.

Subpart C—Additional Requirements

§ 1351.20 What are the additional requirements under a Runaway and Homeless Youth Program grant?

(a) To improve the administration of the Runaway and Homeless Youth Program by increasing the capability of the runaway and homeless youth service providers to deliver services, HHS will require grantees to accept technical assistance and short-term training as a condition of funding for each budget period.

(1) Technical assistance may be provided in, but not limited to, such areas as:

- Program Management,
- Fiscal Management,
- Development of coordinated networks of private nonprofit agencies to provide services, and
- Low cost community alternatives for runaway or otherwise homeless youth.

(2) Short-term training may be provided in, but not limited to, such areas as:

- Shelter facility staff development,
- Aftercare services or counseling,
- Fund raising techniques,
- Youth and Family counseling, and
- Crisis intervention techniques.

(b) Grantees will be required to coordinate their activities with the 24-hour National toll-free communication system which links runaway and homeless youth projects and other service providers with runaway or otherwise homeless youth.

(c) Grantees will also be required to submit statistical reports profiling the clients served. The statistical reporting requirements are mandated by the Act which states that ''runaway and homeless youth projects shall keep adequate statistical records profiling the children and families which it serves . . .''

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

Sec.

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APPENDIX A TO PART 1355—FOSTER CARE DATA ELEMENTS.
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APPENDIX E TO PART 1355—DATA STANDARDS.

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*; 42 U.S.C. 1302.

§ 1355.10 Scope.

Unless otherwise specified, part 1355 applies to States and Indian Tribes and contains general requirements for Federal financial participation under titles IV-B and IV-E of the Social Security Act.

[61 FR 58653, Nov. 18, 1996]

§ 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

Adoption means the method provided by State law, or for a Tribal title IV–E agency, Tribal law, which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed ''adoption'' after the legal process is complete.

Child abuse and neglect means the definition contained in 42 U.S.C. 5106(g)(2).

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. The licensing authority must be a State authority in the State in which the child care institution is located, a Tribal authority with respect to a child care institution on or near an Indian Reservation, or a Tribal authority of a Tribal title IV–E agency with respect to a child care institution in the Tribal title IV–E agency's service area. This

definition must not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to §1356.21(k). A title IV–E agency may use a date earlier than that required in this definition, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Entity, as used in §1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the title IV–E agency; performs title IV–E functions pursuant to a contract or subcontract with the title IV–E agency; and, receives title IV–E funds. A State or Tribal court is not an ''entity'' for the purposes of §1355.38 except if an administrative arm of the State or Tribal court carries out title IV–E administrative functions pursuant to a contract with the title IV–E agency.

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. ''Daily supervision'' for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV–E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing authority must be a State authority in the State in which the foster family home is located, a Tribal authority with respect to a foster family home on or near an Indian Reservation, or a Tribal authority of a Tribal title IV–E agency with respect to a foster family home in the Tribal title IV–E agency's service area. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State or Tribal agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV–E eligibility requirements. Title IV–E agencies may, however, claim title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and title IV–E agency review of all federally-assisted child and family services programs, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the title IV–E agency's substantial conformity with the plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment (or for a Tribal title IV–E agency, an assessment of the service area) and a subsequent on-site review, as described in §1355.33 of this part.

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State/Tribal review of one or more federally-assisted child and family services program(s), including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the title IV–E agency and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part;

(2) For the purpose of title IV–B and title IV–E State plan compliance issues that are outside the prescribed child and family services review format, e.g., compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State compliance; or

(3) For the purpose of title IV–E plan compliance issues for a Tribal title IV–E agency which are outside of the prescribed child and family services review format, a review of Tribal laws, policies, regulations, or other information appropriate to the nature of the concern, to determine plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court

(including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the title IV–E agency filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the title IV–E agency has documented to the State or Tribal court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the title IV–E agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

State means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E the term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

State agency means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

Statewide assessment (or Tribal assessment) means the initial phase of a full review of all federally-assisted child and family services programs in the States (or for a Tribal title IV–E agency, in the service area), including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in §1355.33(b) of this part, for the purpose of determining substantial conformity with the plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part.

Title IV–E agency means the State or Tribal agency administering or supervising the administration of the title IV–B and title IV–E plans.

Tribal agency means, for the purpose of title IV–E, the agency of the Indian Tribe, Indian Tribal organization (as those terms are defined in section 479B(a) of the Act) or consortium of Indian Tribes that is administering or supervising the administration of the title IV–E and title IV–B, subpart 1 plan.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996; 65 FR 4076, Jan. 25, 2000; 66 FR 58675, Nov. 23, 2001; 77 FR 925, Jan. 6, 2012]

§1355.21 Plan requirements for titles IV–E and IV–B.

(a) The plans for titles IV–E and IV–B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The plans for titles IV–E and IV–B must provide for compliance with the Department's regulations applicable to the State and/or Tribe as listed in 45 CFR 1355.30.

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The title IV–E agency also must make available for public review and inspection the title IV–E Plan.

[48 FR 23114, May 23, 1983, as amended at 61 FR 58654, Nov. 18, 1996; 77 FR 926, Jan. 6, 2012]

§ 1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

(a) The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

(e) Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

(g) Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

(h) Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

[61 FR 58654, Nov. 18, 1996]

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to State and Tribal programs funded under titles IV–B and IV–E of the Act.

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR Part 30—Claims Collection.

(c) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(d) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

(e) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title.

(g) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. Part 75 of this title is applicable to title IV–B programs and the John H. Chafee Foster Care Independence Program under Section 477 of the Act that are operated by States and/or Tribes. Part 75 of this title is applicable to title IV–E foster care and adoption assistance programs operated by a State title IV–E agency, except that section 75.306 Cost sharing or matching and section 75.341 Financial reporting do not apply. Part 75 of this title is applicable to title IV–E foster care and adoption assistance programs operated by a Tribal title IV–E agency pursuant to section 479B, except that section 75.341 and the sections specified in §1356.68 do not apply to a Tribal title IV–E agency.

(j) 45 CFR Part 93—New Restrictions on Lobbying.

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). Part 95 of this title is applicable to State and Indian Tribe operated title IV–B and title IV–E programs, except:

(1) Notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to State and Indian Tribe-operated title IV–B (subparts 1 and 2) program and the John H. Chafee Foster Care Independence Program; and

(2) 45 CFR part 95 Subpart E, Cost Allocation Plans, is not applicable to Indian Tribe-operated title IV–E foster care and adoption assistance pursuant to section 479B of the Act (ACYF–CB–PI–10–13).

(l) 45 CFR Part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV-B programs).

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans? This section is applicable to a State title IV–E agency only.

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) §201.5—Grants. Applicable to title IV–E foster care and adoption assistance only.

(2) §201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. Applicable only to an unapprovable change in an approved plan, or the failure of the agency to change its approved plan to conform to a new Federal requirement for approval of plans.

(3) §201.15—Deferral of claims for Federal financial participation. Applicable only to title IV–E foster care and adoption assistance.

(4) §201.66—Repayment of Federal funds by installments. Applicable only to title IV–E foster care and adoption assistance.

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review. Applicable to State title IV–E agencies only.

(p) 45 CFR Part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) §205.5—Plan amendments.

(2) §205.10—Hearings.

(3) §205.50—Safeguarding information for the financial assistance programs.

(4) §205.100—Single State agency.

[61 FR 58654, Nov. 18, 1996, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012; 81 FR 3022, Jan. 20, 2016]

§1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs under subparts 1 and 2 of title IV–B of the Act, and reviews of foster care and adoption assistance programs under title IV–E of the Act.

[77 FR 926, Jan. 6, 2012]

§1355.32 Timetable for the reviews.

(a) *Initial reviews.* Each State must complete an initial full review as described in §1355.33 of this part during the four-year period after the final rule

becomes effective. Each Tribal title IV–E agency must complete an initial full review as described in §1355.33 of this part, during the four-year period after the ACF determines that the Tribe has approved title IV–B, subpart 1 and 2 and title IV–E plans and has sufficient cases for ACF to apply the procedures in §1355.33(c).

(b) *Reviews following the initial review.* (1) A title IV–E agency found to be operating in substantial conformity during an initial or subsequent review, as defined in §1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed statewide assessment, or in the case of a Tribal title IV–E agency, a completed Tribal assessment of the service area, to ACF three years after the on-site review. The assessment will be reviewed jointly by the title IV–E agency and ACF to determine the State's or Indian Tribe's continuing substantial conformity with the plan requirements subject to review. No formal approval of this interim assessment by ACF is required.

(2) A program found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in §1355.35 of this part; and

(ii) Begin a full review two years after approval of the program improvement plan.

(c) *Reinstatement of reviews based on information that a title IV–E agency is not in substantial conformity.* (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the title IV–E agency may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry and require the title IV–E agency to submit additional data whenever ACF receives information that the title IV–E agency may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the title IV–E agency is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under §1355.32(b).

(4) ACF may proceed with a full or partial review if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with plan requirements that are outside the scope of a child and family services review.* When ACF becomes aware of a title IV-B or title IV-E compliance issue that is outside the scope of the child and family services review process, we will:

(1) Conduct an inquiry and require the title IV–E agency to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the title IV–E agency is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be in compliance.

(4) If the partial review determines that the title IV–E agency is not in compliance with the applicable plan requirement, the title IV–E agency must enter into a program improvement plan designed to bring the title IV–E agency into compliance, if the provisions for such a plan are applicable. The terms, action steps and timeframes of the program improvement plan will be developed on a case-by-case basis by ACF and the title IV–E agency. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the title IV–E agency's title IV–B or IV–E allocation. If the title IV–E agency remains out of compliance, the title IV–E agency will be subject to a penalty related to the extent of the noncompliance.

[65 FR 4076, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012]

§ 1355.33 Procedures for the review.

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a statewide assessment and an on-site review; and

(2) Be conducted by a team of Federal, and State or Tribal reviewers that includes:

(i) Staff of the child and family services agency, including the offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the title IV–E agency, in collaboration with the ACF Regional Office, from those with whom the title IV–E agency was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(l);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the title IV–E agency and ACF.

(b) *Statewide or Tribal Assessment.* The first phase of the full review will be a statewide assessment, or for a Tribal title IV–E agency a service area assessment, conducted by the title IV–E agency's internal and external members of the review team. The assessment must:

(1) Address each systemic factor under review including the statewide/Tribal information system; case review system; quality assurance system; staff training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the title IV–E agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The title IV–E agency must also analyze and explain its performance in meeting the national standards for the statewide/Tribal service area data indicators;

(3) Assess the characteristics of the title IV–E agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the title IV–E agency's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the title IV–E agency who participated in the preparation of the assessment pursuant to § 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the assessment to the title IV–E agency.

(c) *On-site review.* The second phase of the full review will be an on-site review.

(1) The on-site review will cover the title IV–E agency's programs under titles IV–B and IV–E of the Act, including in-home services and foster care. It will be jointly planned by the title IV–E agency and ACF, and guided by information in the completed assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions or jurisdictions of the title IV–E agency, as agreed upon by the ACF and the title IV–E agency; however, for a State title IV–E agency, a State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the title IV–E agency's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions or jurisdiction referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Interviews with caseworkers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's or Tribal title IV–E agency's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

(5) The sample will range from 30–50 cases. Foster care cases must be drawn randomly from AFCARS, or, for the initial review, from another source approved by ACF and include children who entered foster care during the year under review. In-home cases must be drawn randomly from NCANDS or from another source approved by ACF. To ensure that all program areas are adequately represented, the sample size may be increased.

(6) The sample of 30–50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 foster care and 150 in-home services cases. The oversample must be statistically significant at a 90 percent compliance rate (95 percent in subsequent reviews), with a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide/Tribal assessment and the on-site review in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide or Tribal assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the title IV–E agency's option:

(1) The submission of additional information by the title IV–E agency; or

(2) ACF and the title IV–E agency will review additional cases using only those indicators in which the discrepancy occurred. ACF and the title IV–E agency will determine jointly the number of additional cases to be reviewed, not to exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the title IV–E agency based on the nature of the concern. A partial review does not substitute for the full reviews as required under §1355.32(b).

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the assessment and the findings of the on-site portion of the review, ACF will notify the title IV–E agency in writing of whether the title IV–E agency is, or is not, operating in substantial conformity.

[65 FR 4077, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 927, Jan. 6, 2012]

§ 1355.34 Criteria for determining substantial conformity.

(a) *Criteria to be satisfied.* ACF will determine a title IV–E agency's substantial conformity with title IV–B and title IV–E plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for the statewide/Tribal service area data indicators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the title IV–E agency's capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.* (1) A title IV–E agency's substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children's needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A title IV–E agency's level of achievement with regard to each outcome reflects the extent to which a title IV–E agency has:

(i) Met the national standard(s) for the statewide/Tribal service area data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(7) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances as required by section 422(b)(8)(B) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(9) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(10) of the Act regarding a title IV–E agency's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A title IV–E agency will be determined to be in substantial conformity if its performance on:

(i) Each statewide/Tribal service area data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as ''substantially achieved'' in 95 percent of the cases examined during the on-site review (90 percent of the cases for an initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(4) The Secretary may, using AFCARS and NCANDS, develop statewide/Tribal service area data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide/Tribal service area data indicator(s) when appropriate. To the extent practical and feasible, the statewide/Tribal service area data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105–89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to title IV–E agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the title IV–E agency also must satisfy criteria related to the delivery of services. Based on information from the assessment and onsite review, the title IV–E agency must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the plan requirements associated with the systemic factor must be in place, and no more than one of the plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section is rated on the basis of only one plan requirement. To be considered in substantial conformity, the plan requirement associated with statewide/Tribal information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide/Tribal information system:* The State/Tribal title IV–E agency is operating a statewide/Tribal information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section (422)(b)(8)(A)(i) of the Act);

(2) *Case review system:* The title IV–E agency has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child's parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents' home where such placement is in the child's best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the title IV–E agency has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the title IV–E agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(8)(A)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and a right to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(8)(A)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The title IV–E agency has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State/Tribal service area where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The title IV–E agency is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the title IV–E agency's CFSP;

(ii) Addresses services provided under both subparts of title IV-B and the training plan under title IV-E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State/Tribal-licensed or State/Tribal-approved child care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the assessment and on-site review determines that the title IV–E agency has in place an array of services (45 CFR 1357.15(n) and section 422(b)(8)(A)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions and/or the entire service area covered in the CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The title IV–E agency, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State/Tribal and county/local agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, Tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(3));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State or Tribe has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State or Tribe to every licensed or approved foster family home or child care institution receiving funds under title IV–E or IV–B of the Act (section 471(a)(10) of the Act);

(iii) The title IV–E agency complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The title IV–E agency has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State or Tribe for whom foster and adoptive homes are needed (section 422(b)(7) of the Act); and,

(v) The title IV–E agency has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(10) of the Act).

(d) *Availability of review instruments.* ACF will make available to the title IV–E agencies copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

[65 FR 4078, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 928, Jan. 6, 2012]

§ 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.* (1) Title IV–E agencies found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by title IV–E agency and Federal staff in consultation with the review team;

(ii) Identify the areas in which the title IV–E agency's program is not in substantial conformity;

(iii)Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide/Tribal data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the title IV–E agency's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the title IV–E agency cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for assigning such content or degree of improvement.

(b) *Voluntary program improvement plan.* Title IV–E agencies found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The title IV–E agency and Regional Office agree that there are areas of the title IV–E agency's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the title IV–E agency's failure to achieve

the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.* (1) A title IV–E agency determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the title IV–E agency will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the title IV–E agency does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of §1355.36 of this part will begin.

(d) *Duration of program improvement plans.* (1) ACF retains the authority to establish time frames for the program improvement plan consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity, not to exceed two years.

(2) Particularly egregious areas of nonconformity impacting child safety must receive priority in both the content and time frames of the program improvement plans and must be addressed in less than two years.

(3) The Secretary may approve extensions of deadlines in a program improvement plan not to exceed one year. The circumstances under which requests for extensions will be approved are expected to be rare. The title IV–E agency must provide compelling documentation of the need for such an extension. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) Title IV–E agencies must provide quarterly status reports (unless ACF and the title IV–E agency agree to less frequent reports) to ACF. Such reports must inform ACF of progress in implementing the measures of the plan.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the title IV–E agency and ACF, in collaboration with other members of the review team, as described in the title IV–E agency's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the title IV–E agency is operating in substantial conformity or has reached the negotiated standard with respect to statewide/Tribal service area data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the title IV–E agency and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the title IV–E agency's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the title IV–E agency and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The title IV–E agency and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the title IV–E agency's program determined not to be in substantial conformity and/or achieve a standard for the statewide/Tribal service area data indicators that is acceptable to ACF;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved;

(iii) The terms of the renegotiated plan are approved by ACF; and

(iv) The Secretary approves any extensions beyond the two-year limit.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must

be incorporated into the goals and objectives of the title IV–E agency's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4080, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 929, Jan. 6, 2012]

§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.

(a) *For the purposes of this section:*

(1) The term ''title IV–B funds'' refers to the title IV–E agency's combined allocation of title IV–B subpart 1 and subpart 2 funds; and

(2) The term ''title IV–E funds'' refers to the title IV–E agency's reimbursement for administrative costs for the foster care program under title IV–E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of title IV–B and IV–E funds to be withheld due to a finding that the title IV–E agency is not operating in substantial conformity, as follows:

(1) A title IV–E agency will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV–B and IV–E funds will not be withheld from a title IV–E agency if the determination of nonconformity was caused by the title IV–E agency's correct use of formal written statements of Federal law or policy provided the title IV–E agency by DHHS.

(3) A portion of the title IV–E agency's title IV–B and IV–E funds will be withheld by ACF for the year under review and for each succeeding year until the title IV–E agency either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV–B and title IV–E funds subject to withholding due to a determination that a title IV–E agency is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The title IV–E agency's allotment of title IV–B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the title IV–E agency's Federal claims for title IV–E foster care administrative costs for each of the years to which withholding applies;

(5) The amount of funds to be withheld from the pool in paragraph (b)(4) of this section will be computed as follows:

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in § 1355.34(b)(1) of this part that is determined not to be in substantial conformity; and

(ii) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in § 1355.34(c) of this part that is determined not to be in substantial conformity.

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the title IV–E agency is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which

a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to two percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) Title IV–E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to three percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV–B and title IV–E funds to be withheld due to the title IV–E agency's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.* (1) For title IV–E agencies determined not to be operating in substantial conformity, ACF will suspend the withholding of the title IV–E agencies' title IV–B and title IV–E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of §1355.35 of this part; and

(ii) The title IV–E agency is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For title IV–E agencies determined not to be in substantial conformity, ACF will terminate the withholding of the title IV–E agency's title IV–B and title IV–E funds related to the nonconformity upon determination by the title IV–E agency and ACF that the title IV–E agency has achieved substantial conformity or has successfully completed a program improvement plan. ACF will rescind the withholding of the portion of title IV-B and title IV-E funds related to specific goals or action steps as of the date at the end of the quarter in which they were determined to have been achieved.

(e) *Withholding of funds.* (1) Title IV–E agencies determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV–B and title IV–E funds which are to be withheld.

(2) Title IV-B and title IV-E funds will be withheld based on the following:

(i) If the title IV–E agency fails to submit status reports in accordance with §1355.35(d)(4), or if such reports indicate that the title IV–E agency is not making satisfactory progress toward achieving goals or actions steps, funds

will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

(ii) Funds related to goals and action steps that have not been achieved by the specified completion date will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the completion date of the affected goal or action step; and

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the title IV–E agency to be in substantial conformity or the title IV–E agency successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the title IV–E agency is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A title IV–E agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV–B and title IV–E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The title IV–E agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.18.

[65 FR 4081, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 930, Jan. 6, 2012]

§ 1355.37 Opportunity for public inspection of review reports and materials.

The title IV–E agency must make available for public review and inspection all statewide or Tribal assessments (§ 1355.33(b)), report of findings (§ 1355.33(e)), and program improvement plans (§ 1355.35(a)) developed as a result of a full or partial child and family services review.

[77 FR 931, Jan. 6, 2012]

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.* (1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a title IV–E agency or an entity in the State/Tribe:

(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,

(iii) With respect to a title IV–E agency, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the title IV–E agency or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95–608) does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.* (1) A title IV–

E agency or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A title IV–E agency or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The title IV–E agency may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan for approval until it has an approved plan.

(4) A title IV–E agency or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgment once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a title IV–E agency's statute, regulation, policy, procedure, or practice.* (1) A title IV–E agency found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the title IV–E agency will have to complete the corrective action and come into compliance. If the title IV–E agency fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the title IV–E agency does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plan.* ACF will evaluate corrective action plans and notify the title IV–E agency (in writing) of its success or failure to complete the plan within 30 calendar days. If the title IV–E agency has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the title IV–E agency's title IV–E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term ''title IV–E funds'' refers to the amount of Federal funds advanced or paid to the title IV–E agency for allowable costs incurred by a title IV–E agency for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV–E and includes the title IV–E agency's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) *Reduction of title IV-E funds.* (1) Title IV-E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a title IV–E agency or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a title IV–E agency's failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a title IV–E agency (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the title IV–E agency's title IV–E funds will be reduced for the fiscal quarter in which the title IV–E agency received written notification and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the entity is notified of the violation.

(3) For title IV–E agencies that fail to complete a corrective action plan within 6 months, title IV–E funds will be reduced by ACF for the fiscal quarter in which the title IV–E agency received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the title IV–E agency completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a title IV–E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV–E agency is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV–E agency will have its title IV–E funds reduced due to a finding of a title IV–E agency's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV-E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) Title IV–E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the title IV–E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV–E agency comes into compliance with section 471(a)(18). The reduction in title IV-E funds will be computed as follows:

(i) 2 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV–E agency's title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV–E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency in accordance with

the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV–E agency will be reduced by more than 5 percent of its title IV–E funds, as defined in paragraph (f) of this section, where the title IV–E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV–E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001; 77 FR 931, Jan. 6, 2012]

§ 1355.39 Administrative and judicial review.

A title IV–E agency determined not to be in substantial conformity with titles IV–B and IV–E plan requirements, or a title IV–E agency or an entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in §1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in §1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV–E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV–E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000, as amended at 77 FR 932, Jan. 6, 2012]

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each title IV–E agency which administers or supervises the administration of titles IV–B and IV–E must implement a system to collect data. The data reporting system must meet the requirements of §1355.40(b) and electronically report certain data regarding children in foster care and adoption. The foster care data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each data transmission must include all children in foster care for whom the title IV–E agency has responsibility for placement, care, or supervision. This includes American Indian children covered under the assurances in section 422(b)(8) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in Appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, the title IV–E agency also will be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data. For children in the Tribal title IV–E agency's placement and care responsibility who are placed outside of the Tribal service area, the Indian Tribe placing the child and making foster care payments submits and continually updates the data for each such child.

(3) For the purposes of adoption reporting, data are required to be transmitted by the title IV–E agency on all adopted children who were placed by

the title IV–E agency, and on all adopted children for whom the agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV-E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the title IV–E agency which placed the child submits the data. Similarly, the Tribal title IV–E agency which placed the child outside of the Tribal service area for adoption submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The title IV–E agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must be entered for children who have been in foster care for more than nine months. Entry of this date constitutes title IV–E agency certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the title IV–E agency's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, the title IV–E agency must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the title IV–E agency's detailed submission for the reporting period.

(5) A variety of internal data consistency checks will be used to judge the internal consistency of the semi-annual detailed data submission. These are specified in Appendix E to this part.

(c) *Missing data standards.* (1) The term ''missing data'' refers to instances where no data have been entered, if applicable, for a particular data element. In addition, all data elements which fail a consistency check for a particular case will be converted to missing data. All data which are ''out of range'' (i.e., the response is beyond the parameters allowed for that particular data element) will also be converted to missing data. Details of the circumstances under which data will be converted to missing data are specified in appendix E to this part. Data elements with responses of ''cannot be determined'' or ''not yet determined'' are not considered as having missing data.

(2) Substantial noncompliance occurs when missing data exceed 10 percent for any one data element.

(d) *Timeliness of foster care data reports.* Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care) or the title IV–E agency will be found in substantial noncompliance.

(e) *Substantial Noncompliance.* Failure by a title IV–E agency to meet any of the standards described in paragraphs

(a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0267. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[58 FR 67924, Dec. 22, 1993, as amended at 60 FR 40507, Aug. 9, 1995; 65 FR 4084, Jan. 25, 2000; 66 FR 58676, Nov. 23, 2001; 77 FR 932, Jan. 6, 2012]

§ 1355.50 Purpose.

Sections 1355.50 through 1355.59 contain the requirements a title IV–E agency must meet to receive Federal financial participation authorized under sections 474(a)(3)(C) and (D), and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a comprehensive child welfare information system.

[81 FR 35479, June 2, 2016]

§ 1355.51 Definitions applicable to Comprehensive Child Welfare Information Systems (CCWIS).

(a) The following terms as they appear in §§ 1355.50 through 1355.59 are defined as follows—

Approved activity means a project task that supports planning, designing, developing, installing, operating, or maintaining a CCWIS.

Automated function means a computerized process or collection of related processes to achieve a purpose or goal.

Child welfare contributing agency means a public or private entity that, by contract or agreement with the title IV–E agency, provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families.

Data exchange means the automated, electronic submission or receipt of information, or both, between two automated data processing systems.

Data exchange standard means the common data definitions, data formats, data values, and other guidelines that the state's or tribe's automated data processing systems follow when exchanging data.

New CCWIS project means a project to build an automated data processing system meeting all requirements in § 1355.52 and all automated functions meet the requirements in § 1355.53(a).

Non-S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF had not classified as a S/TACWIS and for which:

(i) ACF approved a development procurement; or

(ii) The applicable state or tribal agency approved a development procurement below the thresholds of 45 CFR 95.611(a); or

(iii) The operational automated data processing system provided the data for at least one AFCARS or NYTD file for submission to the federal system or systems designated by ACF to receive the report.

Notice of intent means a record from the title IV–E agency, signed by the governor, tribal leader, or designated state or tribal official and provided to ACF declaring that the title IV–E agency plans to build a CCWIS project that is below the APD approval thresholds of 45 CFR 95.611(a).

S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF classified as a S/TACWIS and for which:

(i) ACF approved a procurement to develop a S/TACWIS; or

(ii) The applicable state or tribal agency approved a development procurement for a S/TACWIS below the thresholds of 45 CFR 95.611(a).

Transition period means the 24 months after the effective date of these regulations.

(b) Other terms as they appear in §§ 1355.50 through 1355.59 are defined in 45 CFR 95.605.

[81 FR 35479, June 2, 2016]

§ 1355.52 CCWIS project requirements.

(a) *Efficient, economical, and effective requirement.* The title IV–E agency's CCWIS must support the efficient, economical, and effective administration

of the title IV–B and IV–E plans pursuant to section 474(a)(3)(C)(iv) of the Act by:

(1) Improving program management and administration by maintaining all program data required by federal, state or tribal law or policy;

(2) Appropriately applying information technology;

(3) Not requiring duplicative application system development or software maintenance; and

(4) Ensuring costs are reasonable, appropriate, and beneficial.

(b) *CCWIS data requirements.* The title IV–E agency's CCWIS must maintain:

(1) Title IV–B and title IV–E data that supports the efficient, effective, and economical administration of the programs including:

(i) Data required for ongoing federal child welfare reports;

(ii) Data required for title IV–E eligibility determinations, authorizations of services, and expenditures under IV–B and IV–E;

(iii) Data to support federal child welfare laws, regulations, and policies; and

(iv) Case management data to support federal audits, reviews, and other monitoring activities;

(2) Data to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews;

(3) For states, data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the state's compliance with the Indian Child Welfare Act; and

(4) For each state, data for the National Child Abuse and Neglect Data System.

(c) *Reporting requirements.* The title IV–E agency's CCWIS must use the data described in paragraph (b) of this section to:

(1) Generate, or contribute to, required title IV–B or IV–E federal reports according to applicable formatting and submission requirements; and

(2) Generate, or contribute to, reports needed by state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews that support programs and services described in title IV–B and title IV–E.

(d) *Data quality requirements.* (1) The CCWIS data described in paragraph (b) of this section must:

(i) Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy;

(ii) Be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems;

(iii) Be exchanged and maintained in accordance with confidentiality requirements in section 471(a)(8) of the Act, and 45 CFR 205.50, and 42 U.S.C. 5106a(b)(2)(B)(viii) through (x) of the Child Abuse Prevention and Treatment Act, if applicable, and other applicable federal and state or tribal laws;

(iv) Support child welfare policies, goals, and practices; and

(v) Not be created by default or inappropriately assigned.

(2) The title IV–E agency must implement and maintain automated functions in CCWIS to:

(i) Regularly monitor CCWIS data quality;

(ii) Alert staff to collect, update, correct, and enter CCWIS data;

(iii) Send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS;

(iv) Prevent, to the extent practicable, the need to re-enter data already captured or exchanged with the CCWIS; and

(v) Generate reports of continuing or unresolved CCWIS data quality problems.

(3) The title IV–E agency must conduct biennial data quality reviews to:

(i) Determine if the title IV–E agency and, if applicable, child welfare contributing agencies, meet the requirements of paragraphs (b), (d)(1), and (d)(2) of this section; and

(ii) Confirm that the bi-directional data exchanges meet the requirements of paragraphs (e) and (f) of this section, and other applicable ACF regulations and policies.

(4) The title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges or both to correct any findings from reviews described at paragraph (d)(3) of this section.

(5) The title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of Annual or Operational APDs submitted to ACF as required in 45 CFR 95.610. The CCWIS data quality plan must:

(i) Describe the comprehensive strategy to promote data quality including the steps to meet the requirements at paragraphs (d)(1) through (3) of this section; and

(ii) Report the status of compliance with paragraph (d)(1) of this section.

(e) *Bi-directional data exchanges.* (1) The CCWIS must support efficient, economical, and effective bi-directional data exchanges to exchange relevant data with:

(i) Systems generating the financial payments and claims for titles IV–B and IV–E per paragraph (b)(1)(ii) of this section, if applicable;

(ii) Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable;

(iii) Each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii) of this section, if applicable; and

(iv) Each system external to CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

(2) To the extent practicable, the title IV–E agency's CCWIS must support one bi-directional data exchange to exchange relevant data, including data that may benefit IV–E agencies and data exchange partners in serving clients and improving outcomes, with each of the following state or tribal systems:

(i) Child abuse and neglect system(s);

(ii) System(s) operated under title IV–A of the Act;

(iii) Systems operated under title XIX of the Act including:

(A) Systems to determine Medicaid eligibility described in 42 CFR 433.111(b)(2)(ii)(A); and

(B) Medicaid Management Information Systems as defined at 42 CFR 433.111(b)(2)(ii)(B);

(iv) Systems operated under title IV–D of the Act;

(v) Systems operated by the court(s) of competent jurisdiction over title IV–E foster care, adoption, and guardianship programs;

(vi) Systems operated by the state or tribal education agency, or school districts, or both.

(f) *Data exchange standard requirements.* The title IV–E agency must use a single data exchange standard that describes data, definitions, formats, and other specifications upon implementing a CCWIS:

(1) For bi-directional data exchanges between CCWIS and each child welfare contributing agency; and

(2) For data exchanges with systems described under paragraph (e)(1)(iv) of this section.

(g) *Automated eligibility determination requirements.* (1) A state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(2) A tribal title IV–E agency must, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(h) *Software provision requirement.* The title IV–E agency must provide a copy of the agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository within the Department upon request.

(i) *Submission requirements.* (1) Before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent that includes:

(i) A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;

(ii) A list of all automated functions included in the CCWIS; and

(iii) A notation of whether each automated function listed in paragraph (i)(1)(ii) of this section meets, or when

implemented will meet, the following requirements:

(A) The automated function supports at least one requirement of this section or, if applicable §1355.54;

(B) The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

(C) The automated function complies with the CCWIS design requirements described under §1355.53(a), unless exempted in accordance with §1355.53(b).

(2) Annual APD Updates and Operational APDs for CCWIS projects must include:

(i) An updated list of all automated functions included in the CCWIS;

(ii) A notation of whether each automated function listed in paragraph (i)(2)(i) of this section meets the requirements of paragraph (i)(1)(iii)(B) of this section; and

(iii) A description of changes to the scope or the design criteria described at §1355.53(a) for any automated function listed in paragraph (i)(2)(i) of this section.

(j) *Other applicable requirements.* Regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641 are applicable to all CCWIS projects below the APD submission thresholds at 45 CFR 95.611.

[81 FR 35479, June 3, 2016]

§1355.53 CCWIS design requirements.

(a) Except as exempted in paragraph (b) of this section, automated functions contained in a CCWIS must:

(1) Follow a modular design that includes the separation of business rules from core programming;

(2) Be documented using plain language;

(3) Adhere to a state, tribal, or industry defined standard that promotes efficient, economical, and effective development of automated functions and produces reliable systems; and

(4) Be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

(b) CCWIS automated functions may be exempt from one or more of the requirements in paragraph (a) of this section if:

(1) The CCWIS project meets the requirements of §1355.56(b) or (f)(1); or

(2) ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a) of this section.

[81 FR 35481, June 2, 2016]

§1355.54 CCWIS options.

If a project meets, or when completed will meet, the requirements of §1355.52, then ACF may approve CCWIS funding described at §1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B programs goals.

[81 FR 35481, June 2, 2016]

§1355.55 Review and assessment of CCWIS projects.

ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§1355.52, 1355.53, 1355.56, and, if applicable, §1355.54.

[81 FR 35481, June 2, 2016]

§1355.56 Requirements for S/TACWIS and non-S/TACWIS projects during and after the transition period.

(a) During the transition period a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

(b) A S/TACWIS project must meet the submission requirements of §1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in §1355.57(a) after the transition period.

(c) A title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in §1355.57(b) by meeting the

submission requirements of §1355.52(i)(1).

(d) A title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project must:

(1) Notify ACF in an APD or Notice of Intent submitted during the transition period of this election; and

(2) Continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

(e) A title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under §1355.58(d).

(f) A title IV–E agency with a non-S/TACWIS (as defined in §1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirements of §1355.52(i)(1):

(1) During the transition period to qualify for a CCWIS cost allocation as described at §1355.57(a); or

(2) At any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at §1355.57(b).

[81 FR 35481, June 2, 2016]

§1355.57 Cost allocation for CCWIS projects.

(a) *CCWIS cost allocation for projects transitioning to CCWIS.* (1) All automated functions developed after the transition period for projects meeting the requirements of §1355.56(b) or §1355.56(f)(1) must meet the CCWIS design requirements described under §1355.53(a), unless exempted by §1355.53(b)(2).

(2) The Department may approve the applicable CCWIS cost allocation for an automated function of a project transitioning to a CCWIS if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of §1355.52 or, if applicable §1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(b) *CCWIS cost allocation for new CCWIS projects.* (1) Unless exempted in accordance with §1355.53(b)(2), all automated functions of a new CCWIS project must meet the CCWIS design requirements described under §1355.53(a).

(2) An automated function of a CCWIS project described in paragraph (b)(1) of this section may qualify for a CCWIS cost allocation if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of §1355.52 or, if applicable §1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(c) *CCWIS cost allocation for approved activities.* The Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of paragraph (a) or (b) of this section.

(d) *Project cost allocation.* A title IV–E agency must allocate project costs in accordance with applicable HHS regulations and other guidance.

(e) *CCWIS cost allocation.* (1) A title IV–E agency may allocate CCWIS development and operational costs to title IV–E for the share of approved activities and automated functions that:

(i) Are approved by the Department;

(ii) Meet the requirements of paragraphs (a), (b), or (c) of this section; and

(iii) Benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act to the title IV–E program.

(2) A title IV–E agency may also allocate CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements (e)(1)(i) and (ii) of this section and:

(i) Benefit title IV–B programs; or

(ii) Benefit both title IV–E and child welfare related programs.

(f) *Non-CCWIS cost allocation.* Title IV–E costs not previously described in this section may be charged to title IV–E in accordance with §1356.60(d) .

[81 FR 35481, June 2, 2016]

§ 1355.58 Failure to meet the conditions of the approved APD.

(a) In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in the APD for a CCWIS if ACF determines that the title IV–E agency fails to comply with APD requirements in 45 CFR part 95, subpart F, or meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(b) Suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to:

(1) Comply with APD requirements in 45 CFR part 95, subpart F; or

(2) Meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

(c) The suspension will remain in effect until the date that ACF:

(1) Determines that the title IV–E agency complies with 45 CFR part 95, subpart F; or

(2) Approves a plan to change the application to meet the requirements at § 1355.52 and, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(d) If ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

[81 FR 35482, June 2, 2016]

§ 1355.59 [Reserved]

APPENDIX A TO PART 1355—FOSTER CARE DATA ELEMENTS

SECTION I—FOSTER CARE DATA ELEMENTS

Data elements preceded by ''**'' are the only data elements required for children who have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either ''**'' and ''***'' are the only data elements required. This means that, for these two categories of children, these are the only data elements to which the missing data standard will be applied.

I. General Information

**A. Title IV–E agency _____

**B. Report date ____ (mo.) ____ (yr.)

**C. Local Agency (County or Equivalent Jurisdiction) _____

**D. Record Number _____

**E. Date of Most Recent Periodic Review (if Applicable) ____ (mo.) ____ (day) ____ (yr.)

II. Child's Demographic Information

**A. Date of Birth ____ (mo.) ____ (day) ____ (yr.)

**B. Sex ____

Male: 1

Female: 2

C. Race/Ethnicity

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific Islander

e. White

f. Unable to Determine

Yes: 1

No: 2

Unable to Determine: 3

D. Has this child been clinically diagnosed as having a disability(ies)? ____

Yes: 1

No: 2

Not Yet Determined: 3

1. If yes, indicate *each* type of disability with a ''1''

Mental Retardation ____

Visually or Hearing Impaired ____

Physically Disabled ____

Emotionally Disturbed (DSM III)

Other Medically Diagnosed Condition Requiring Special Care ____

E. 1. Has this child ever been adopted? ____

Yes: 1

No: 2

Unable to Determine: 3

2. If yes, how old was the child when the adoption was legalized? ____

Less than 2 years old: 1

2 to 5 years old: 2

6 to 12 years old: 3

13 years or older: 4

Unable to determine: 5

III. Removal/Placement Setting Indicators

A. Removal Episodes

Date of First Removal From Home ____ (mo.) ____ (day) ____ (yr.)

Total Number of Removals From Home to Date ____

Date Child was Discharged From Last Foster Care Episode (if Applicable) ____ (mo.) ____ (day) ____ (yr.)

**; Date of Latest Removal From Home ____ (mo.) ____ (day) ____ (yr.)

**Transaction Date ____ (mo.) ____ (day) ____ (yr.)

B. Placement Settings

Date of Placement in Current Foster Care Setting ____ (mo.) ____ (day) ____ (yr.)

Number of Previous Placement Settings During This Removal Episode ____

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode ____
Voluntary: 1
Court Ordered: 2
Not Yet Determined: 3
B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a ''1'')
Physical Abuse (Alleged/Reported) _____
Sexual Abuse (Alleged/Reported) _____
Neglect (Alleged/Reported) _____
Alcohol Abuse (Parent) _____
Drug Abuse (Parent) _____
Alcohol Abuse (Child) _____
Drug Abuse (Child) _____
Child's Disability _____
Child's Behavior Problem _____
Death of Parent(s) _____
Incarceration of Parent(s) _____
Caretaker's Inability to Cope Due to Illness or Other Reasons _____
Abandonment _____
Relinquishment _____
Inadequate Housing _____

**V. Current Placement Setting _____

**A. Pre-Adoptive Home: 1
Foster Family Home (Relative): 2
Foster Family Home (Non-Relative): 3
Group Home: 4
Institution: 5
Supervised Independent Living: 6
Runaway: 7
Tribal Home Visit: 8
**B. Is Current Placement Out-of-State/Tribal service area? _____
Yes (Out-of-State/Tribal service area Placement): 1
No (In State/Tribal service area Placement): 2***

VI. Most Recent Case Plan Goal _____

Reunify With Parent(s) or Principal Caretaker(s): 1
Live With Other Relative(s): 2
Adoption: 3
Long Term Foster Care: 4
Emancipation: 5
Guardianship: 6
Case Plan Goal Not Yet Established: 7

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
Unable to Determine: 5
B. Year of Birth
1st Principal Caretaker _____
2nd Principal Caretaker (If Applicable) ____

VIII. Parental Rights Termination (If Applicable)

A. Mother ____ (mo.) ____ (day) ____ (yr.)
B. Legal or Putative Father ____ (mo.) ____ (day) ____ (yr.)

IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)

A. Foster Family Structure _____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
1st Foster Caretaker _____
2nd Foster Caretaker (If Applicable) _____
C. Race/Ethnicity
1. Race of 1st Foster Caretaker
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of 1st Foster Caretaker ____
Yes: 1
No: 2
Unable to Determine: 3
3. Race of 2nd Foster Caretaker (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of 2nd Foster Caretaker (If Applicable)
Yes: 1
No: 2
Unable to Determine: 3

X. Outcome Information

**A. Date of Discharge From Foster Care ____ (mo.) ____ (day)____ (yr.)
**Transaction Date ____ (mo.) ____ (day) ____ (yr.)
**B. Reason for Discharge _____
Reunification With Parents or Primary Caretakers: 1
Living with Other Relative(s): 2
Adoption: 3
Emancipation: 4
Guardianship: 5
Transfer to Another Agency: 6
Runaway: 7
Death of Child: 8

XI. Source(s) of Federal Financial Support/Assistance for Child (Indicate all that apply with a ''1'')

Title IV–E (Foster Care) _____
Title IV–E (Adoption Assistance) _____
Title IV–A (Aid to Families with Dependent Children) _____

Title IV–D (Child Support) _____
Title XIX (Medicaid) _____
SSI or Other Social Security Act Benefits
None of the Above _____

XII. Amount of the monthly foster care payment (regardless of sources). ____

SECTION II—DEFINITIONS OF AND INSTRUCTIONS FOR FOSTER CARE DATA ELEMENTS

Reporting population. The population to be included in this reporting system includes all children in foster care under the responsibility of the title IV–E agency administering or supervising the administration of the title IV–B Child and Family Services plan and the title IV–E plan; that is, all children who are required to be provided the assurances of section 422(b)(8) of the Social Security Act.

This population includes all children supervised by or under the responsibility of another public agency with which the title IV–E agency has an agreement under title IV–E and on whose behalf the title IV–E agency makes title IV–E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own home. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

—Family foster homes
—Relative foster homes (whether payments are made or not)
—Group homes
—Emergency shelters
—Residential facilities
—Child care institutions
—Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the title IV–E agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of ''8''.

I. General Information

A. Title IV–E agency**—for a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV–E agency, the abbreviation provided by ACF.

B. Report Date**—the last month and year for the reporting period.

C. Local Agency**— Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used or other ACF-provided code.

D. Record Number**—The sequential number which the title IV–E agency uses to transmit data to the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the title IV–E agency level.

E. Date of Most Recent Periodic Review (if applicable)—For children who have been in care for seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

II. Child's Demographic Information

A. Date of Birth**—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex**—Indicate as appropriate.

C. Race/Ethnicity**

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a through e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a ''1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a

person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

D. Has the child been clinically diagnosed as having a disability(ies)? ''Yes'' indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. ''No'' indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. ''Not Yet Determined'' indicates that a clinical assessment of the child by a qualified professional has not been conducted.

1. Indicate Each Type of Disability With a ''1''

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the development period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

E.1. Has this child ever been adopted? If this child has ever been legally adopted, enter ''yes.'' If the child has never been legally adopted, enter ''no''. Enter ''Unable to Determine'' if the child has been abandoned or the child's parent(s) are otherwise not available to provide the information.

2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter ''Unable to Determine.''

III. Removal/Placement Setting Indicators

A. Removal Episodes—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

Date of First Removal From Home—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current[1] removal is the first removal, enter the date of the current removal.[1]For children who have exited foster care, ''current'' refers to the most recent removal episode and the most recent placement setting.

Total Number of Removals from Home to Date—The number of times the child was removed from home, including the current removal.

Date Child was Discharged From Last Foster Care Episode (If Applicable)—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

Date of Latest Removal From Home**—Month, day and year the child was last removed from his/her home for the purpose of being place in foster care. This would be the date for the current episode or, if the child has existed foster care, the date of removal for the most recent removal.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Latest Removal From Home'' was entered into the information system.

B. Placement Settings.

Date of Placement in Current Foster Care Setting—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

Number of Previous Placement Settings During This Removal Episode—Enter the number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

IV. Circumstances of Removal

A. Manner of Removal From Home for Current Placement Episode.

Voluntary Placement Agreement—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary

even if a subsequent court order is issued to continue the child in foster care.

Court Ordered—The court has issued an order which is the basis of the child's removal.

Not Yet Determined—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

B. Actions or Conditions Associated With Child's Removal (indicate all that apply with a ''1''.)

Physical Abuse—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

Sexual Abuse—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.

Neglect—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

Alcohol Abuse (Parent)—Principal caretaker's compulsive use of alcohol that is not of a temporary nature.

Drug Abuse (Parent)—Principal caretaker's compulsive use of drugs that is not of a temporary nature.

Alcohol Abuse (Child)—Child's compulsive use of or need for alcohol. This element should include infants addicted at birth.

Drug Abuse (Child)—Child's compulsive use of or need for narcotics. This element should include infants addicted at birth.

Child's Disability—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child's removal.

Child's Behavior Problem—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child's running away from home or other placement.

Death of Parent(s)—Family stress or inability to care for child due to death of a parent or caretaker.

Incarceration of Parent(s)—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

Caretaker's Inability to Cope Due to Illness or Other Reasons—Physical or emotional illness or disabling condition adversely affecting the caretaker's ability to care for the child.

Abandonment—Child left alone or with others; caretaker did not return or make whereabouts known.

Relinquishment—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

Inadequate Housing—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

V. Current Placement Setting**

A. Identify the type of setting in which the child currently lives.

Pre-Adoptive Home—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

Foster Family Home (Relative)—A licensed or unlicensed home of the child's relatives regarded by the title IV–E agency as a foster care living arrangement for the child.

Foster Family Home (Non-Relative)—A licensed foster family home regarded by the title IV–E agency as a foster care living arrangement.

Group Home—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

Institution—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

Supervised Independent Living—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

Runaway—The child has run away from the foster care setting.

Trial Home Visit—The child has been in a foster care placement, but, under title IV–E agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting outside of the State or Tribal service area?

''Yes'' indicates that the current placement setting is located outside of the State or the Tribal service area of the Tribal title IV–E agency making the report.

''No'' indicates that the child continues to reside within the State or the Tribal service

area of the Tribal title IV–E agency making the report.

NOTE: Only the title IV–E agency with placement and care responsibility for the child should include the child in this reporting system.

VI. Most Recent Case Plan Goal***

Indicate the most recent case plan goal for the child based on the latest review of the child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

Reunify With Parents or Principal Caretaker(s)—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering foster care in order to reestablish a stable family environment.

Live With Other Relatives—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

Adoption—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

Long Term Foster Care—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

Emancipation—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

Guardianship—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

Case Plan Goal Not Yet Established—No case plan goal has yet been established other then the care and protection of the child.

VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter ''Unable to Determine'' if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—Indicate the race for each of the foster parent(s). See instructions and definitions for the race categories under data element II.C.1. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race. Hispanic or Latino Ethnicity—Indicate the ethnicity for each of the foster parent(s). See instructions and definitions under data element II.C.2. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her ethnicity.

X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care**—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date**—A computer generated date which accurately indicates the month, day and year the response to ''Date of Discharge from Foster Care'' was entered into the information system.

B. Reason for Discharge**.

Reunification With Parents or Primary Caretakers—The child was returned to his or her principal caretaker(s)' home.

Living With Other Relatives—The child went to live with a relative other than the one from whose home he or she was removed.

Adoption—The child was legally adopted.

Emancipation—The child reached majority according to the law by virtue of age, marriage, etc.

Guardianship—Permanent custody of the child was awarded to an individual.

Transfer to Another Agency—Responsibility for the care of the child was awarded to another agency—either in or outside of the State or Tribal service area.

Runaway—The child ran away from the foster care placement.

Death of Child—The child died while in foster care.

XI. Source(s) of Federal Support/Assistance for Child (Indicate All That Apply With a ''1''.)

Title IV–E (Foster Care)—Title IV–E foster care maintenance payments are being paid on behalf of the child.

Title IV–E (Adoption Subsidy)—Title IV–E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

Title IV–A (Aid to Families With Dependent Children)—Child is living with relative(s) whose source of support is an AFDC payment for the child.

Title IV–D (Child Support)—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

Title XIX (Medicaid)—Child is eligible for and may be receiving assistance under title XIX.

SSI or Other Social Security Act Benefits—Child is receiving support under title XVI or other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the title IV–E agency, or from some other source (Federal or non-Federal) which is not indicated above.

XII. Amount of the Monthly Foster Care Payment (Regardless of Sources)

Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

[77 FR 934, Jan. 6, 2012]

APPENDIX B TO PART 1355—ADOPTION DATA ELEMENTS

SECTION I—ADOPTION DATA ELEMENTS

I. General Information
A. Title IV–E agency____
B. Report Date ____(mo.) ____(day) ____(yr.)
C. Record Number____
D. Did the Title IV–E Agency Have any Involvement in This Adoption? ____
Yes: 1
No: 2

II. Child's Demographic Information

A. Date of Birth ____(mo) ____(day) ____(yr.)
B. Sex ____
Male: 1
Female: 2
C. Race/Ethnicity
1. Race
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity____
Yes: 1
No: 2
Unable to determine: 3

III. Special Needs Status

A. Has the title IV–E agency determined that this child has special needs? ____
Yes: 1
No: 2
B. If yes, indicate the primary basis for determining that this child has special needs ____
Racial/Original Background: 1
Age: 2
Membership in a Sibling Group to be Placed for Adoption Together: 3
Medical Conditions or Mental, Physical or Emotional Disabilities: 4
Other: 5
1. If III. B was ''4,'' indicate with a ''1'' the type(s) of disability(ies)
Mental Retardation ____
Visually or Hearing Impaired ____
Physically Disabled ____
Emotionally Disturbed (DSM III) ____
Other Medically Diagnosed Condition Requiring Special Care ____

IV. Birth Parents

A. Year of Birth ____
Mother, If known ____
Father (Putative or Legal), if known ____
B. Was the mother married at the time of the child's birth? ____
Yes: 1
No: 2
Unable to Determine: 3

V. Court Actions

A. Dates of Termination of Parental Rights
Mother ____(mo.) ____(day) ____(yr.)
Father ____(mo.) ____(day) ____(yr.)
B. Date Adoption Legalized ____(mo.) ____(day) ____(yr.)

VI. Adoptive Parents

A. Family Structure ____
Married Couple: 1
Unmarried Couple: 2
Single Female: 3
Single Male: 4
B. Year of Birth
Mother (if Applicable) ____
Father (if Applicable) ____
C. Race/Ethnicity
1. Adoptive Mother's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
2. Hispanic or Latino Ethnicity of Mother (If Applicable)____
Yes: 1
No: 2
Unable to Determine: 3
3. Adoptive Father's Race (If Applicable)
a. American Indian or Alaska Native
b. Asian
c. Black or African American
d. Native Hawaiian or Other Pacific Islander
e. White
f. Unable to Determine
4. Hispanic or Latino Ethnicity of Father (If Applicable)____
Yes: 1
No: 2
Unable to Determine: 3
D. Relationship of Adoptive Parent(s) to the Child (Indicate with a ''1'' all that apply)
Stepparent
Other Relative of Child by Birth or Marriage ____
Foster Parent of Child ____
Non-Relative ____

VII. Placement Information

A. Child Was Placed From ____
Within State/Tribal Service Area: 1
Another State/Tribal Service Area: 2
Another Country: 3
B. Child Was Placed by ____
Public Agency: 1
Private Agency: 2
Tribal Agency: 3
Independent Person: 4
Birth Parent: 5

VIII. Financial Adoption Support

A. Is a monthly financial subsidy being paid for this child? ____
Yes: 1
No: 2
B. If yes, the monthly amount ____
C. If VIII. A is yes, is the subsidy paid under Title IV–E adoption assistance? ____
Yes: 1
No: 2

SECTION II—DEFINITIONS OF INSTRUCTIONS FOR ADOPTION DATA ELEMENTS

Reporting Population

The title IV–E agency must report on all children who are adopted in the State or Tribal service area during the reporting period and in whose adoption the title IV–E agency has had any involvement. Failure to report on these adoptions will result in assessed finding of noncompliance. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State or Tribal service area, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV–E agency.

These children must be identified by answering ''yes'' to data element I.D. Children who are reported by the title IV–E agency, but for whom there has not been any title IV–E agency involvement, and whose reporting, therefore, has not been mandated, are identified by answering ''no'' to element I.D.

I. General Information

A. Title IV–E agency—For a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV–E agency, the two letter abbreviation provided by ACF.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the title IV–E agency uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the title IV–E agency level.

D. Did the title IV–E Agency Have Any Involvement in This Adoption?

Indicate whether the title IV–E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

• A child who had been in foster care under the responsibility and care of the child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided;

• A special needs child who was adopted in the State or Tribal service area, whether or

not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or

• A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV–E agency.

II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Ethnicity

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a-e) that apply with a ''1.'' For those that do not apply, indicate a ''0.'' Indicate ''f. Unable to Determine'' with a 1'' if it applies and a ''0'' if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is ''unable to determine'' because the child is very young or is severely disabled and no person is available to identify the child's race. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer ''yes'' if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. ''Unable to Determine'' is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic or Latino. ''Unable to determine'' is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

III. Special Needs Status

A. Has the title IV–E Agency Determined That the Child has Special Needs? Use the title IV–E agency definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV–E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs and only as it is defined by the title IV–E agency. Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the title IV–E agency.

Age—Primary factor or condition for special needs is age of the child as defined by the title IV–E agency.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the title IV–E agency.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the title IV–E agency, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was ''4.'' Indicate with a ''1'' the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they

are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State or Tribe. If the child was abandoned and no information was available on the mother, enter ''Unable to Determine.''

V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents. If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Ethnicity—Indicate the race/ethnicity for each of the adoptive parent(s). See instructions and definitions for the race/ethnicity categories under data element II.C. Use ''f. Unable to Determine'' only when a parent is unwilling to identify his or her race or ethnicity.

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State or Tribal service area—Responsibility for the child resided with an individual or agency within the State or service area of the Tribal title IV–E agency filing the report.

Another State or Tribal service area—Responsibility for the child resided with an individual or agency in another State, Tribal service area, or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the federally recognized Indian Tribes, Indian Tribal organizations, or Indian Tribal consortia.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter ''yes'' if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal, State, or Tribal) are paid.

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate ''0'' if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is ''Yes,'' is Child Receiving Title IV–E Adoption Subsidy?

If VIII.A is ''yes,'' indicate whether the subsidy is claimed by the title IV–E agency for reimbursement under title IV–E. Do not include title IV–E non-recurring costs in this item.

[77 FR 934, Jan. 6, 2012]

APPENDIX C TO PART 1355—ELECTRONIC DATA TRANSMISSION FORMAT

All AFCARS data to be sent from title IV–E agencies to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical assistance will be provided to negotiate a method of transmission best suited to the title IV–E agency's environment.

There will be four semi-annual electronic data transmissions from the title IV–E agency to the Administration for Children and Families (ACF).

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the title IV–E agency:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See Appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All title IV–E agencies must inform the Department, in writing, of the method of transfer they intend to use.

[77 FR 934, Jan. 6, 2012]

APPENDIX D TO PART 1355—FOSTER CARE AND ADOPTION RECORD LAYOUTS

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month order (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 8, 11–15, 26–40, 52, 54 and 59–65, which are ''select all that apply'' elements, enter a ''1'' for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the title IV–E agency's automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Local Agency FIPS code (county or equivalent jurisdiction) or other ACF assigned code.	5
04	I.D	Record number	12
05	I.E	Date of most recent periodic review	8
06	II.A	Child's date of birth	8
07	II.B	Sex	1
08	II.C.1	Race.	
08a		American Indian or Alaska native	1
08b		Asian	1
08c		Black or African American	1
08d		Native Hawaiian or Other Pacific Islander	1
08e		White	1
08f		Unable to Determine	1
09	II.C.2	Hispanic or Latino Ethnicity	1
10	II.D	Has this child been clinically diagnosed as having a disability(ies). Indicate each type of disability of the child with a ''1'' for elements 11–15 and a zero for disabilities that do not apply.	1
11	II.D.1.a	Mental retardation	1
12	II.D.1.b	Visually or hearing impaired	1
13	II.D.1.c	Physically disabled	1
14	II.D.1.d	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1	Has this child ever been adopted	1
17	II.E.2	If yes, how old was the child when the adoption was legalized?	1

Element No.	Appendix A data element	Data element description	Number of numeric characters
18	III.A.1	Date of first removal from home	8
19	III.A.2	Total number of removals from home to date	2
20	III.A.3	Date child was discharged from last foster care episode	8
21	III.A.4	Date of latest removal from home	8
22	III.A.5	Removal transaction date	8
23	III.B.1	Date of placement in current foster care setting	8
24	III.B.2	Number of previous placement settings during this removal episode.	2
25	IV.A	Manner of removal from home for current placement episode.	1
		Actions or conditions associated with child's removal: Indicate with a "1" for elements 26–40 and a zero for conditions that do not apply.	
26	IV.B.1	Physical abuse (alleged/reported)	1
27	IV.B.2	Sexual abuse (alleged/reported)	1
28	IV.B.3	Neglect (alleged/reported)	1
29	IV.B.4	Alcohol abuse (parent)	1
30	IV.B.5	Drug abuse (parent)	1
31	IV.B.6	Alcohol abuse (child)	1
32	IV.B.7	Drug abuse (child)	1
33	IV.B.8	Child's disability	1
34	IV.B.9	Child's behavior problem	1
35	IV.B.10	Death of parent(s)	1
36	IV.B.11	Incarceration of parent(s)	1
37	IV.B.12	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13	Abandonment	1
39	IV.B.14	Relinquishment	1
40	IV.B.15	Inadequate housing	1
41	V.A	Current placement setting	1
42	V.B	Out of State/Tribal service area placement	1
43	VI	Most recent case plan goal	1
44	VII.A	Caretaker family structure	1
45	VII.B.1	Year of birth (1st principal caretaker)	4
46	VII.B.2	Year of birth (2nd principal caretaker)	4
47	VIII.A	Date of mother's parental rights termination	8
48	VIII.B	Date of legal or putative father's parental rights	8
49	IX.A	Foster family structure	1
50	IX.B.1	Year of birth (1st foster caretaker)	4
51	IX.B.2	Year of birth (2nd foster caretaker)	4
52	IX.C.1	Race of 1st foster caretaker.	
52a		American Indian or Alaska Native	1
52b		Asian	1
52c		Black or Asian American	1
52d		Native Hawaiian or Other Pacific Islander	1
52e		White	1
52f		Unable to Determine	1
53	IX.C.2	Hispanic or Latino ethnicity of 1st foster caretaker	1
54	IX.C.3	Race of 2nd foster caretaker.	
54a		American Indian or Alaska Native	1
54b		Asian	1
54c		Black or African American	1
54d		Native Hawaiian or Other Pacific Islander	1
54e		White	1
54f		Unable to Determine	1
55	IX.C.4	Hispanic or Latino ethnicity of 2nd foster caretaker	1
56	X.A.1	Date of discharge from foster care	8
57	X.A.2	Foster care discharge transaction date	8
58	X.B	Reason for discharge	1
		Sources of Federal support/assistance for child; indicate with a "1" for elements 58–64 and a zero for sources that do not apply.	
59	XI.A	Title IV–E (Foster Care)	1
60	XI.B	Title IV–E (Adoption Assistance)	1
61	XI.C	Title IV–A (Aid to Families With Dependent Children)	1
62	XI.D	Title IV–D (Child Support)	1
63	XI.E	Title XIX (Medicaid)	1
64	XI.F	SSI or other Social Security Act benefits	1
65	XI.G	None of the above	1
66	XII	Amount of monthly foster care payment (regardless of source).	5
		Total characters	197

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYYYMM), e.g.,199912 for December 1999.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	174

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

a. The record will consist of 37 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 7, 11–15, 25, 27 and 29–32 which are ''select all that apply'' elements, enter a ''1'' for each element that applies; enter a zero for non-applicable elements.

c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Record number	6
04	I.D	Title IV–E agency involvement	1
05	II.A	Date of birth	6
06	II.B	Sex	1
07	II.C.1	Race.	
07a		American Indian or Alaska Native	1
07b		Asian	1
07c		Black or African American	1
07d		Native Hawaiian or Other Pacific Islander	1
07e		White	1
07f		Unable to Determine	1
08	II.C.2	Hispanic or Latino ethnicity	1

Element No.	Appendix B data element	Data element description	Number of numeric characters
09	III.A	Has the title IV–E agency determined that this child has special needs.	1
10	III.B	Primary basis for special needs Indicate a primary basis of special needs with a ''1'' for elements 11–15. Enter a zero for special needs that do not apply.	1
11	III.B.1.a	Mental retardation	1
12	III.B.1.b	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e	Other medically diagnosed condition requiring special care	1
16	IV.A.1	Mother's year of birth	4
17	IV.A.2	Father's (Putative or legal) year of birth	4
18	IV.B	Was the mother married at time of child's birth	1
19	V.A.1	Date of mother's termination of parental rights	8
20	V.A.2	Date of father's termination of parental rights	8
21	V.B	Date adoption legalized	8
22	VI.A	Adoptive parents family structure	1
23	VI.B.1	Mother's year of birth (if applicable)	4
24	VI.B.2	Father's year of birth (if applicable)	4
25	VI.C.1	Adoptive mother's race.	
25a		American Indian or Alaska Native	1
25b		Asian	1
25c		Black or African American	1
25d		Native Hawaiian or Other Pacific Islander	1
25e		White	1
25f		Unable to Determine	1
26	VI.C.2	Hispanic or Latino Ethnicity	1
27	VI.C.3	Adoptive father's race.	
27a		American Indian or Alaska Native	1
27b		Asian	1
27c		Black or African American	1
27d		Native Hawaiian or Other Pacific Islander	1
27e		White	1
27f		Unable to Determine	1
28	VI.C.4	Hispanic or Latino Ethnicity Indicate each type of relationship of adoptive parent(s) to the child with a ''1'' for elements 29–32. Enter a zero for relationships that do not apply below.	1
29	VI.D.1	Stepparent	1
30	VI.D.2	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A	Child was placed from	1
34	VII.B	Child was placed by	1
35	VIII.A	Is this child receiving a monthly subsidy	1
36	VIII.B	If VIII.B is ''yes.'' What is the monthly amount	5
37	VIII.C	If VII.B is ''yes.'' Is the child receiving title IV–E adoption assistance?.	1
		Total Characters	

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYYYMM), e.g., 199912 for December 1999.

c. Adoption Semi-Annual Summary Data Element Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	174

[77 FR 934, Jan. 6, 2012]

APPENDIX E TO PART 1355—DATA STANDARDS

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of a substantial noncompliance determination with the title IV–E plan.

The four types of assessments are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV–E agency. The two summary files (the one submitted by the title IV–E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV–E agency within 24 hours of the time the title IV–E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the

''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) or other ACF assigned code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11–15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must not be blank.

(7) If Date Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a ''1''. Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49–55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a ''1''. Enter a zero for sources that do not apply.

(12) If the answer to the question, ''Has this child ever been adopted?'' (Element 16) is ''1'' (Yes), then the question, ''How old was the child when the adoption was legalized?'' (Element 17) must have an answer from ''1'' to ''5.''

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, ''Not Yet Determined.''

(14) If Reason for Discharge (Element 58) is option 3, ''Adoption,'' then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

(18) In Elements 8, 52, and 54, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Not Yet Determined'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)–(18) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission

will be considered missing and processing will not proceed.

Element No.	Element name
01	Title IV–E agency.
02	Report date.
03	Local agency FIPS code or other ACF assigned code.
04	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a finding of substantial noncompliance with the title IV–E plan.

Element No.	Element description
05	Date of most recent periodic, review.
06	Child's date of birth.
07	Child's sex.
08	Child's race.
09	Child's Hispanic or Latino Ethnicity.
10	Does child have a disability(ies)?
11–15	Type of disability (at least one must be selected).
16	Has child been adopted?
17	How old was child when adoption was legalized?
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State/Tribal service area placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.
47	Date of mother's parental rights termination.
48	Legal or putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic or Latino Ethnicity of 1st foster caretaker.
54	Race of 2nd foster caretaker.
55	Hispanic or Latino Ethnicity of 2nd foster caretaker.
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).
66	Amount of monthly foster care payment (regardless of source).

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

(1) Selection Rules.

All data elements will be used in calculating missing data unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:

Elements
1 to 4
6 to 9
21 and 22
41 and 42
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:

Elements
1 to 4
6 to 9
21 and 22
41 and 43
56 to 58

(2) Determination of substantial noncompliance with the title IV–E plan.

The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports

Title IV–E agencies are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

Computer generated transaction dates indicate the date when key foster care events are entered into the title IV–E agency's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.

a. Date of Latest Removal From Home.

The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.

b. The Date of Discharge From Foster Care Transaction Data (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.

For purposes of a determination of substantial noncompliance with the title IV–E plan, ninety percent of the records in a detailed data submission, must indicate that:

(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;

and, where applicable,

(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption

1. Summary Data Elements File Submission Standards

A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means (see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV–E agency. The two summary files (the one submitted by the title IV–E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV–E agency within 24 hours of the time the title IV–E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the ''Date Adoption Legalized.'' If this is not the case, an internal inconsistency will be detected and an ''error'' indicated in the detailed data file.

A number of data elements have ''if applicable'' contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then the appropriate sex of the single female/male element in the ''Family Structure,'' ''Year of Birth'' and ''Race/Origin'' elements must be completed and the ''non-applicable'' fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the title IV–E agency has determined that the child is a special needs child (Element 9), then ''the primary basis for determining that this child has special needs'' (Element 10) must be completed. If ''the primary basis for determining that this child has special needs'' (Element 10) is answered by option ''4,'' then at least one element between Elements 11–15, ''Type of Disability,'' must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

(4) If ''Is a monthly financial subsidy being paid for this child'' (Element 35) is answered negatively, ''2'', then Element 36 must be zero (0) and ''Is the subsidy paid under Title IV–E adoption assistance'' (Element 37) must be a ''2''.

(5) If the ''Child Was Placed By'' (Element 34) is answered with option 1, ''Public Agency,'' then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(6) If the ''Relationship of Adoptive Parent(s) to the Child,'' ''Foster Parent of Child'' (Element 31) is selected, then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1''.

(7) If ''Is a monthly financial subsidy being paid for this child?'' (Element 35) answered ''1,'' then the question, ''Did the title IV–E Agency Have any Involvement in This Adoption'' (Element 4) must be ''1.''

(8) If the ''Family Structure'' (Element 22) is option 3, Single Female, then the Mother's Year of Birth (Element 23), the ''Adoptive Mother's Race'' (Element 25) and ''Hispanic or Latino Ethnicity'' (Element 26) must be completed. Similarly, if the ''Family Structure'' (Element 22) is option 4, Single Male, then the Father's Year of Birth (Element 24),

the Adoptive Father's Race'' (Element 27) and ''Hispanic or Latino Ethnicity'' (Element 28) must be completed. If the ''Family Structure'' (Element 22) is option 1 or 2, then both Mother's and Father's ''Year of Birth,'' ''Race'' and ''Hispanic or Latino Ethnicity'' must be completed.

(9) In Elements 7, 25, and 27, race categories (''a'' through ''e'') and ''f. Unable to Determine'' cannot be coded ''0,'' for it does not apply. If any of the race categories apply and are coded as ''1'' then ''f. Unable to Determine'' cannot also apply.

b. Out-of-Range Standards

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is ''1'' for a male and ''2'' for a female, but the datum provided in the element is ''3,'' this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

3. Missing Data Standards

The term ''missing data'' refers to instances where data for an element are required but are not present in the submission. Data elements with values of ''Unable to Determine,'' ''Other'' or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(9) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01	Title IV–E agency.
02	Report date.
03	Record number.
04	Did the title IV–e agency have any involvement in this adoption?

(2) Less Than Ten Percent Missing Data

The data for the elements listed below cannot have ten percent or more missing data without incurring a determination of substantial noncompliance with the title IV–E plan.

Element No.	Element name
05	Child's date of birth.
06	Child's sex.
07	Child's race.
08	Is the child of Hispanic or Latino ethnicity?
09	Does child have special needs?
10	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15	Type of special need (at least one must be selected.)
16	Mother's year of birth.
17	Father's year of birth.
18	Was mother married at time of child's birth?
19	Date of mother's termination of parental rights.
20	Date of father's termination of parental rights.
21	Date adoption legalized.
22	Adoptive parent(s)' family structure.
23	Mother's year of birth.
24	Father's year of birth.
25	Adoptive mother's race.
26	Hispanic or Latino ethnicity of mother.
27	Adoptive father's race.
28	Hispanic or Latino ethnicity of father.
29–32	Relationship of adoptive parent(s) to child (at least one must be selected.)
33	Child placed from.
34	Child placed by.
35	Is a monthly financial subsidy paid for this child?
36	If yes, the monthly amount is?
37	Is the child receiving Title IV–E adoption assistance? (If Element 35 is a ''1'' (Yes) an answer to this question is required.)

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

(1) Selection Rules.

Only the adoption records with a ''1'' (Yes) answer in Element 4, ''Did the title IV–E Agency have any Involvement in this adoption'' will be subject to a determination of substantial noncompliance with the title IV–E plan.

(2) Determination of substantial noncompliance with the title IV–E plan.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Adoption Reports

The title IV–E agency is required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For determinations of substantial noncompliance with the title IV–E plan purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the title IV–E agency's option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

[77 FR 934, Jan. 6, 2012]

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

Sec.

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1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.
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APPENDIX A TO PART 1356—NYTD DATA ELEMENTS
APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY
APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

§ 1356.10 Scope.

This part applies to title IV–E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

[77 FR 946, Jan. 6, 2012]

§ 1356.20 Title IV–E plan document and submission requirements.

(a) To be in compliance with the title IV–E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a title IV–E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV–E agencies, section 479B(c) of the Act. The title IV–E plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the title IV–E agency.

(b) Failure by a title IV–E agency to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the title IV–E agency in complying with the plan.

(c) The following procedures for approval of plans and amendments apply to the title IV–E program:

(1) *Plan.* The plan consists of written documents furnished by the title IV–E agency to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required

by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* Plans and revisions of the plans are submitted first to the State governor or his/her designee, or the Tribal leader or his/her designee for review and then to the regional office, ACYF. Title IV–E agencies are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of plans and amendments. They also initiate discussion with the title IV–E agency on clarification of significant aspects of the plan which come to their attention in the course of this review. Plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the title IV–E agency.

(4) *Action.* ACYF has the authority to approve plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the title IV–E agency of the actions taken on plans or revisions.

(5) *Basis for approval.* Determinations as to whether plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of plans.* The determination as to whether a plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved plan may, at the option of the title IV–E agency, be considered as a submission of a new plan. If the title IV–E agency requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period. In absence of request by a title IV–E agency that an amendment of an approved plan shall be considered as a submission of a new plan, the procedures under §201.6(a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis or, in the case of a Tribal title IV–E agency, in operation in the Tribal title IV–E agency's entire service area. The same applies with respect to plan amendments.

(d) Once the title IV–E plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

[77 FR 946, Jan. 6, 2012]

§ 1356.21 Foster care maintenance payments program implementation requirements.

(a) *Statutory and regulatory requirements of the Federal foster care program.*

To implement the foster care maintenance payments program provisions of the title IV–E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV–E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV–E agency section 479(B)(c)(1)(C)(ii)(II) of the Act.

(b) *Reasonable efforts.* The title IV–E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the ''reasonable efforts'' requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV–E agency must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern.

(1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.* (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) *Judicial determination of reasonable efforts to finalize a permanency plan.* (i) The title IV–E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.* Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the title IV–E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV–E agency, Tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) A court of competent jurisdiction has determined that the parent has been convicted of:

(A) Murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) Voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

(5) *Use of the Federal Parent Locator Service.* The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

(d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV–E agency for the first 12 months that agency's title IV–E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) *Trial home visits.* A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each title IV–E agency's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) *Case plan requirements.* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the title IV–E agency must promulgate policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV–E agency, which is developed jointly with

the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the title IV–E agency, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

(4) Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

(5) Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, Tribal, regional, and national adoption exchanges including electronic exchange systems.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

(h) *Application of the permanency hearing requirements.* (1) To meet the requirements of the permanency hearing, the title IV–E agency must, among other requirements, comply with section 475(5)(C) of the Act.

(2) In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(3) If the title IV–E agency concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the title IV–E agency must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;

(ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,

(iii) the Tribe has identified another planned permanent living arrangement for the child.

(4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.

(i) *Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.* (1) Subject to the exceptions in paragraph (i)(2) of this section, the title IV–E agency must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the title IV–E agency for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the title IV–E agency:

(A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section

475(5)(F) of the Act and §1355.20 of this part;

(B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) Need only apply section 475(5)(E) of the Act to a child once if the title IV–E agency does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State or for a Tribal title IV–E agency, Tribal law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The title IV–E agency may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the title IV–E agency, the child is being cared for by a relative;

(ii) The title IV–E agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

(A) Adoption is not the appropriate permanency goal for the child; or,

(B) No grounds to file a petition to terminate parental rights exist; or,

(C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or

(D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or

(iii) The title IV–E agency has not provided to the family, consistent with the time period in the case plan, services that the title IV–E agency deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the title IV–E agency files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

(j) *Child of a minor parent in foster care.* Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in §1355.20 of this part.

(k) *Removal from the home of a specified relative.* (1) For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

(i) A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV–E agency.

(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

(l) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior

to removal from the home under section 472(a)(1) of the Act, all of the conditions under section 472(a)(3), and for Tribal title IV–E agencies section 479B(c)(1)(C)(ii)(II) of the Act, one of the two following situations must apply:

(1) The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

(2) The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the title IV–E agency must review at reasonable, specific, time-limited periods to be established by the agency:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law or Tribal law by statute, code, resolution, Tribal proceedings or administrative regulation with the force of law.

(o) *Notice and right to be heard.* The title IV–E agency must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 947, Jan. 6, 2012]

§ 1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the title IV–E agency must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(8) and 475(5) of the Act;

(3) 45 CFR 1356.21(e), (f), (g), (h), and (i); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(c) The title IV–E agency must establish and maintain a uniform procedure or system, consistent with State or Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

[65 FR 4090, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 949, Jan. 6, 2012]

§ 1356.30 Safety requirements for foster care and adoptive home providers.

(a) The title IV–E agency must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The title IV–E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a

court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) Child abuse or neglect;

(2) Spousal abuse;

(3) A crime against a child or children (including child pornography); or,

(4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The title IV–E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) Physical assault;

(2) Battery; or,

(3) A drug-related offense.

(d) [Reserved]

(e) In all cases where the State opted out of the criminal records check requirement, as permitted prior to the amendments made by section 152 of Public Law 109–248, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

(f) In order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

[65 FR 4090, Jan. 25, 2000, as amended at 77 FR 949, Jan. 6, 2012]

§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

(a) To implement the adoption assistance program provisions of the title IV–E plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the title IV–E agency must meet the requirements of this section and section 471(a), applicable provisions of section 473, and section 475(3) of the Act.

(b) The adoption assistance agreement for payments pursuant to section 473(a)(2) must meet the requirements of section 475(3) of the Act and must:

(1) Be signed and in effect at the time of or prior to the final decree of adoption. A copy of the signed agreement must be given to each party; and

(2) Specify its duration; and

(3) Specify the nature and amount of any payment, services and assistance to be provided under such agreement and, for purposes of eligibility under title XIX of the Act, specify that the child is eligible for Medicaid services; and

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the place of residence of the adoptive parents at any given time.

(c) There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(d) In the event an adoptive family moves from one place of residence to another, the family may apply for social services on behalf of the adoptive child in the new place of residence. If a needed service(s) specified in the adoption assistance agreement is not available in the new place of residence, the title IV–E agency making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A title IV–E agency may make an adoption assistance agreement with adopting parent(s) who reside in another State or a Tribal service area. If so, all provisions of this section apply.

(f) The title IV–E agency must actively seek ways to promote the adoption assistance program.

[48 FR 23116, May 23, 1983, as amended at 53 FR 50220, Dec. 14, 1988; 77 FR 949, Jan. 6, 2012]

§ 1356.41 Nonrecurring expenses of adoption.

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the title IV–E agency administering the program. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State, Tribal, or Federal adoption assistance payments or services.

(c) There must be no income eligibility requirement (means test) for adopting parents in determining whether payments for nonrecurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(d) For purposes of payment of nonrecurring expenses of adoption, the title IV–E agency must determine that the child is a ''child with special needs'' as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The title IV–E agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services.

(2) The agreement for nonrecurring expenses must be signed at the time of or prior to the final decree of adoption. Claims must be filed with the title IV–E agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the title IV–E agency under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for title IV–E agency expenditures up to $2,000, for any adoptive placement.

(2) Title IV–E agencies may set a reasonable lower maximum which must be based on reasonable charges, consistent with State, Tribal, and local practices, for special needs adoptions within the State or Tribal service area. The basis for setting a lower maximum must be documented and available for public inspection.

(3) In cases where siblings are placed and adopted, either separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

(g) Federal financial participation for nonrecurring expenses of adoption is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made either directly by the title IV–E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV–E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV–E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are

directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. ''Other expenses which are directly related to the legal adoption of a child with special needs'' means the costs of the adoption incurred by or on behalf of the parents and for which parents carry the ultimate liability for payment. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV–E agency with title IV–E of the Act.

(k) A title IV–E expenditure is considered made in the quarter during which the payment was made by a title IV–E agency to a private nonprofit agency, individual or vendor payee.

[53 FR 50220, Dec. 14, 1988, as amended at 77 FR 949, Jan. 6, 2012]

§ 1356.50 Withholding of funds for non-compliance with the approved title IV–E plan.

(a) To be in compliance with the title IV–E plan requirements, a title IV–E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV–E plan requirements, a title IV–E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

(c) For purposes of this section, the procedures in §1355.39 of this chapter apply.

[48 FR 23117, May 23, 1983, as amended at 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012]

§ 1356.60 Fiscal requirements (title IV-E).

(a) *Federal matching funds for foster care maintenance and adoption assistance payments.* (1) Effective October 1, 1980, Federal financial participation (FFP) is available to States under an approved title IV-E State plan for allowable costs in expenditures for:

(1) Federal financial participation (FFP) is available to title IV–E agencies under an approved title IV–E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30, section 472 of the Act, and for a Tribal title IV–E agency, section 479B of the Act;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40, applicable provisions of section 473, section 475(3) and, for a Tribal title IV–E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2) and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for title IV–E agency training for foster care and adoption assistance under title IV–E.* (1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of:

(i) Training personnel employed or preparing for employment by the title IV–E agency administering the plan, and;

(ii) Providing short-term training (including travel and per diem expenses) to current or prospective foster or adoptive parents and the members of the state licensed or approved child care institutions providing care to foster and adopted children receiving title IV-E assistance.

(2) All training activities and costs funded under title IV–E shall be included in the agency's training plan for title IV–B.

(3) Short and long term training at educational institutions and in-service training may be provided in accordance with the provisions of §§235.63 through 235.66(a) of this title.

(c) *Federal matching funds for other title IV–E agency administrative expenditures for foster care and adoption assistance under title IV–E.* Federal financial participation is available at the rate of

fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV–E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

(1) The determination and redetermination of eligibility, fair hearings and appeals, rate setting and other costs directly related only to the administration of the foster care program under this part are deemed allowable administrative costs under this paragraph. They may not be claimed under any other section or Federal program.

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

(i) Referral to services;

(ii) Preparation for and participation in judicial determinations;

(iii) Placement of the child;

(iv) Development of the case plan;

(v) Case reviews;

(vi) Case management and supervision;

(vii) Recruitment and licensing of foster homes and institutions;

(viii) Rate setting; and

(ix) A proportionate share of related agency overhead.

(x) Costs related to data collection and reporting.

(3) Allowable administrative costs do not include the costs of social services provided to the child, the child's family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(d) *Cost of the data collection system.* (1) Costs related to data collection system initiation, implementation and operation may be charged as an administrative cost of title IV-E at the 50 percent matching rate subject to the restrictions in paragraph (d) (2) of this section

(2) For information systems used for purposes other than those specified by section 479 of the Act, costs must be allocated and must bear the same ratio as the foster care and adoption population bears to the total population contained in the information system as verified by reports from all other programs included in the system.

(e) *Federal matching funds for CCWIS and Non-CCWIS.* Federal matching funds are available at the rate of fifty percent (50%). Requirements for the cost allocation of CCWIS and non-CCWIS project costs are at §1355.57 of this chapter.

[47 FR 30925, July 15, 1982, as amended at 48 FR 23117, May 23, 1983; 53 FR 50221, Dec. 14, 1988; 58 FR 67938, 67947, Dec. 22, 1993; 65 FR 4091, Jan. 25, 2000; 66 FR 58677, Nov. 23, 2001; 77 FR 950, Jan. 6, 2012; 81 FR 35482, June 2, 2016]

§§ 1356.65–1356.66 [Reserved]

§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.

(a) Each State with a title IV–E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement in a way that does not affect a child's eligibility for, or payment of, title IV–E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV–E and Medicaid programs under title XIX to the Tribal title IV–E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV–

E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

[77 FR 950, Jan. 6, 2012]

§ 1356.68 Tribal title IV–E agency requirements for in-kind administrative and training contributions from third-party sources.

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011*—(1) *Administrative costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 12 percent of the total training funds expended during a fiscal year quarter pursuant to section 474(a)(3)(A) and (B) of the Act, but only from the following sources:

(i) A State or local government;

(ii) An Indian Tribe, Tribal organization, or Tribal consortium other than the Indian Tribe, organization, or consortium submitting the title IV–E plan;

(iii) A public institution of higher education;

(iv) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)); and

(v) A private charitable organization.

(c) *In-kind expenditures for fiscal years 2012 and thereafter*—(1) *Administrative costs.* A Tribal title IV–E agency may claim in-kind expenditures from third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent (or 30 percent consistent with section 203(b) of Pub. L. 110–351) of the total training funds expended during each quarter of fiscal year 2012 pursuant to section 474(a)(3)(A) and (B) of the Act. For fiscal year 2013 and thereafter, a Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act.

(3) *Third-party sources.* A Tribal title IV–E agency may claim in-kind training expenditures for training funds from any allowable third-party source.

[77 FR 950, Jan. 6, 2012]

§§ 1356.69–1356.70 [Reserved]

§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.

(a) *Purpose, scope and overview of the process.* (1) This section sets forth requirements governing Federal reviews of compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to title IV–E agencies that receive Federal payments for foster care under title IV–E of the Act.

(3) The review process begins with a primary review of foster care cases for the title IV-E eligibility requirements.

(i) *Title IV–E agencies in substantial compliance.* Title IV–E agencies determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *Title IV–E agencies not in substantial compliance.* Title IV–E agencies

that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. A secondary review will be conducted after the completion of the program improvement plan. A subsequent primary review will be held three years from the date of the secondary review.

(b) *Composition of review team and preliminary activities preceding an on-site review.* (1) The review team must be composed of representatives of the title IV–E agency, and ACF's Regional and Central Offices.

(2) The title IV–E agency must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) *Sampling guidance and conduct of review.* (1) The list of sampling units in the target population (*i.e.,* the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the title IV–E agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a title IV–E agency's most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the title IV–E agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV-E foster care program will be selected for the primary review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is found to be in error.

(4) At the completion of the primary review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the title IV–E agency will be considered in substantial compliance.For primary reviews held subsequent to the initial primary reviews, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight or fewer ineligible cases) to less than 10 percent (four or fewer ineligible cases)). A title IV–E agency which meets this standard is considered to be in ''substantial compliance'' (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(5) A title IV–E agency which has been determined to be in ''noncompliance'' (*i.e.,* not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. For the secondary review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is found to be in error.

(6) At the completion of the secondary review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed for the ineligible cases for the period of time the cases are ineligible.

(d) *Requirements subject to review.* Title IV–E agencies will be reviewed against the requirements of title IV–E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)–(4) of the Act) to include:

(i) Judicial determinations regarding ''reasonable efforts'' and ''contrary to the welfare'' in accordance with § 1356.21(b) and (c), respectively;

(ii) Voluntary placement agreements in accordance with § 1356.22;

(iii) Responsibility for placement and care vested with the title IV–E or other public agency per section 472(a)(2)(B) of the Act;

(iv) Placement in a licensed foster family home or child care institution; and,

(v) Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.30.

(e) *Review instrument.* A title IV-E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) *Eligibility determination—child.* The case record of the child must contain sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1) of this section, in order to substantiate payments made on the child's behalf.

(g) *Eligibility determination—provider.* (1) For each case being reviewed, the title IV–E agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

(i) Public child care institutions with 25 children or less in residence;

(ii) Private child care institutions;

(iii) Group homes; and

(iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the title IV–E agency has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the title IV–E agency may provide supplemental information from other sources (*e.g.*, a computerized database).

(h) *Standards of compliance.* (1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(2) Substantial compliance and noncompliance are defined as follows:

(i) *Substantial compliance*—For the primary review (of the sample of 80 cases), no more than eight of the title IV-E cases reviewed may be determined to be ineligible. (This critical number of allowable ''errors,'' *i.e.*, ineligible cases, is reduced to four errors or less in primary reviews held subsequent to the initial primary review). For the secondary review (if required), *substantial compliance* means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) *Noncompliance*—means not in substantial compliance. For the primary review (of the sample of 80 cases), nine or more of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of allowable ''errors,'' *i.e.*, ineligible cases, is reduced to five or more in primary reviews subsequent to the initial primary review). For the secondary review (if required), *noncompliance* means both the case ineligibility and dollar error rates exceed 10 percent.

(3) ACF will notify the title IV–E agency in writing within 30 calendar days after the completion of the review of whether the title IV–E agency is, or is not, operating in substantial compliance.

(4) Title IV–E agencies which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) *Program improvement plans.* (1) Title IV–E agencies which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by title IV–E agency and Federal staff;

(ii) Identify the areas in which the title IV–E agency's program is not in substantial compliance;

(iii) Not extend beyond one year. A title IV–E agency will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State/Tribal legislative action is required. In such instances, an extension may be granted with the title IV–E agency and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first legislative session after the date of the program improvement plan; and

(iv) Include:

(A) Specific goals;

(B) The action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) Title IV–E agencies determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a title IV–E agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the title IV–E agency, the title IV–E agency's progress in completing the prescribed action steps in the program improvement plan.

(4) If a title IV–E agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) Title IV–E agencies which are found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been ineligible.

(2) Title IV–E agencies which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the title IV–E agency's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the title IV–E agency is not in compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (*i.e.*, all title IV–E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The title IV–E agency will be liable for interest on the amount of funds

disallowed by the Department, in accordance with the provisions of 45 CFR 30.18.

(4) Title IV–E agencies may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

[65 FR 4091, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001; 77 FR 951, Jan. 6, 2012]

§ 1356.80 Scope of the National Youth in Transition Database.

The requirements of the National Youth in Transition Database (NYTD) §§ 1356.81 through 1356.86 of this part apply to the agency in any State, the District of Columbia, or Territory, that administers, or supervises the administration of the Chafee Foster Care Independence Program (CFCIP) under section 477 of the Social Security Act (the Act).

[73 FR 10365, Feb. 26, 2008]

§ 1356.81 Reporting population.

The reporting population is comprised of all youth in the following categories:

(a) *Served population.* Each youth who receives an independent living service paid for or provided by the State agency during the reporting period.

(b) *Baseline population.* Each youth who is in foster care as defined in 45 CFR 1355.20 and reaches his or her 17th birthday during Federal fiscal year (FFY) 2011, and such youth who reach a 17th birthday during every third year thereafter.

(c) *Follow-up population.* Each youth who reaches his or her 19th or 21st birthday in a Federal fiscal year and had participated in data collection as part of the baseline population, as specified in section 1356.82(a)(2) of this part. A youth has participated in the outcomes data collection if the State agency reports to ACF a valid response (*i.e.*, a response option other than ''declined'' and ''not applicable'') to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part.

[73 FR 10365, Feb. 26, 2008]

§ 1356.82 Data collection requirements.

(a) The State agency must collect applicable information as specified in section 1356.83 of this part on the reporting population defined in section 1356.81 of this part in accordance with the following:

(1) For each youth in the served population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(c) of this part on an ongoing basis, for as long as the youth receives services.

(2) For each youth in the baseline population, the State agency must collect information for the data elements specified in section 1356.83(b) and 1356.83(d) of this part. The State agency must collect this information on a new baseline population every three years.

(i) For each youth in foster care who turns age 17 in FFY 2011, the State agency must collect this information within 45 days following the youth's 17th birthday, but not before that birthday.

(ii) Every third Federal fiscal year thereafter, the State agency must collect this information on each youth in foster care who turns age 17 during the year within 45 days following the youth's 17th birthday, but not before that birthday.

(iii) The State agency must collect this information using the survey questions in appendix B of this part entitled ''Information to collect from all youth surveyed for outcomes, whether in foster care or not.''

(3) For each youth in the follow-up population, the State agency must collect information on the data elements specified in sections 1356.83(b) and 1356.83(e) of this part within the reporting period of the youth's 19th and 21st birthday. The State agency must collect the information using the appropriate survey questions in appendix B of this part, depending upon whether the youth is in foster care.

(b) The State agency may select a sample of the 17-year-olds in the baseline population to follow over time consistent with the sampling requirements described in section 1356.84 of this part to satisfy the data collection requirements in paragraph (a)(3) of this section for the follow-up population. A

State that samples must identify the youth at age 19 who participated in the outcomes data collection as part of the baseline population at age 17 who are not in the sample in accordance with 45 CFR 1356.83(e).

[73 FR 10365, Feb. 26, 2008]

§ 1356.83 Reporting requirements and data elements.

(a) *Reporting periods and deadlines.* The six-month reporting periods are from October 1 to March 31 and April 1 to September 30. The State agency must submit data files that include the information specified in this section to ACF on a semi-annual basis, within 45 days of the end of the reporting period (*i.e.*, by May 15 and November 14).

(b) *Data elements for all youth.* The State agency must report the data elements described in paragraphs (g)(1) through (g)(13) of this section for each youth in the entire reporting population defined in section 1356.81 of this part.

(c) *Data elements for served youth.* The State agency must report the data elements described in paragraphs (g)(14) through (g)(33) of this section for each youth in the served population defined in section 1356.81(a) of this part.

(d) *Data elements for baseline youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the baseline population defined in section 1356.81(b) of this part.

(e) *Data elements for follow-up youth.* The State agency must report the data elements described in paragraphs (g)(34) through (g)(58) of this section for each youth in the follow-up population defined in section 1356.81(c) of this part or alternatively, for each youth selected in accordance with the sampling procedures in section 1356.84 of this part. A State that samples must identify in the outcomes reporting status element described in paragraph (g)(34), the 19-year-old youth who participated in the outcomes data collection as a part of the baseline population at age 17, who are not in the sample.

(f) *Single youth record.* The State agency must report all applicable data elements for an individual youth in one record per reporting period.

(g) *Data element descriptions.* For each element described in paragraphs (g)(1) through (58) of this section, the State agency must indicate the applicable response as instructed.

(1) *State.* State means the State responsible for reporting on the youth. Indicate the first two digits of the State's Federal Information Processing Standard (FIPS) code for the State submitting the report to ACF.

(2) *Report date.* The report date corresponds with the end of the current reporting period. Indicate the last month and the year of the reporting period.

(3) *Record number.* The record number is the encrypted, unique person identification number for the youth. The State agency must apply and retain the same encryption routine or method for the person identification number across all reporting periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the youth.

(i) If the youth is in foster care as defined in 45 CFR 1355.20 or was during the current or previous reporting period, the State agency must use and report to the NYTD the same person identification number for the youth the State agency reports to AFCARS. The person identification number must remain the same for the youth wherever the youth is living and in any subsequent NYTD reports.

(ii) If the youth was never in the State's foster care system as defined in 45 CFR 1355.20, the State agency must assign a person identification number that must remain the same for the youth wherever the youth is living and in any subsequent reports to NYTD.

(4) *Date of birth.* The youth's date of birth. Indicate the year, month, and day of the youth's birth.

(5) *Sex.* The youth's sex. Indicate whether the youth is male or female as appropriate.

(6) *Race: American Indian or Alaska Native.* In general, a youth's race is determined by the youth or the youth's parent(s). An American Indian or Alaska Native youth has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment. Indicate

whether this racial category applies for the youth, with a ''yes'' or ''no.''

(7) *Race: Asian.* In general, a youth's race is determined by the youth or the youth's parent(s). An Asian youth has origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(8) *Race: Black or African American.* In general, a youth's race is determined by the youth or the youth's parent(s). A Black or African American youth has origins in any of the black racial groups of Africa. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(9) *Race: Native Hawaiian or Other Pacific Islander.* In general, a youth's race is determined by the youth or the youth's parent(s). A Native Hawaiian or Other Pacific Islander youth has origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(10) *Race: White.* In general, a youth's race is determined by the youth or the youth's parent(s). A White youth has origins in any of the original peoples of Europe, the Middle East, or North Africa. Indicate whether this racial category applies for the youth, with a ''yes'' or ''no.''

(11) *Race: unknown.* The race, or at least one race of the youth is unknown, or the youth and/or parent is not able to communicate the youth's race. Indicate whether this category applies for the youth, with a ''yes'' or ''no.''

(12) *Race: declined.* The youth or parent has declined to identify a race. Indicate whether this category applies for the youth, with a ''yes'' or ''no.''

(13) *Hispanic or Latino ethnicity.* In general, a youth's ethnicity is determined by the youth or the youth's parent(s). A youth is of Hispanic or Latino ethnicity if the youth is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Indicate which category applies, with ''yes,'' ''no,'' ''unknown'' or ''declined,'' as appropriate. ''Unknown'' means that the youth and/or parent is unable to communicate the youth's ethnicity. ''Declined'' means that the youth or parent has declined to identify the youth's Hispanic or Latino ethnicity.

(14) *Foster care status—services.* The youth receiving services is or was in foster care during the reporting period if the youth is or was in the placement and care responsibility of the State title IV–B/IV–E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is or was in foster care at any point during the reporting period, with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(15) *Local agency.* The local agency is the county or equivalent jurisdictional unit that has primary responsibility for placement and care of a youth who is in foster care consistent with the definition in 45 CFR 1355.20, or that has primary responsibility for providing services to a youth who is not in foster care. Indicate the five-digit Federal Information Processing Standard (FIPS) code(s) that corresponds to the identity of the county or equivalent unit jurisdiction(s) that meets these criteria during the reporting period. If a youth who is not in foster care is provided services by a centralized unit only, rather than a county agency, indicate ''centralized unit.'' If the youth is not in the served population this element must be left blank.

(16) *Federally recognized tribe.* The youth is enrolled in or eligible for membership in a federally recognized tribe. The term ''federally recognized tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450 *et seq.*). Indicate ''yes'' or ''no'' as appropriate. If the

youth is not in the served population this element must be left blank.

(17) *Adjudicated delinquent.* Adjudicated delinquent means that a State or Federal court of competent jurisdiction has adjudicated the youth as a delinquent. Indicate ''yes,'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(18) *Educational level.* Educational level means the highest educational level completed by the youth. For example, for a youth currently in 11th grade, ''10th grade'' is the highest educational level completed. Post-secondary education or training refers to any post-secondary education or training, other than an education pursued at a college or university. College refers to completing at least a semester of study at a college or university. Indicate the highest educational level completed by the youth during the reporting period. If the youth is not in the served population this element must be left blank.

(19) *Special education.* The term ''special education,'' means specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. Indicate whether the youth has received special education instruction during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(20) *Independent living needs assessment.* An independent living needs assessment is a systematic procedure to identify a youth's basic skills, emotional and social capabilities, strengths, and needs to match the youth with appropriate independent living services. An independent living needs assessment may address knowledge of basic living skills, job readiness, money management abilities, decision-making skills, goal setting, task completion, and transitional living needs. Indicate whether the youth received an independent living needs assessment that was paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(21) *Academic support.* Academic supports are services designed to help a youth complete high school or obtain a General Equivalency Degree (GED). Such services include the following: Academic counseling; preparation for a GED, including assistance in applying for or studying for a GED exam; tutoring; help with homework; study skills training; literacy training; and help accessing educational resources. Academic support does not include a youth's general attendance in high school. Indicate whether the youth received academic supports during the reporting period that were paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(22) *Post-secondary educational support.* Post-secondary educational support are services designed to help a youth enter or complete a post-secondary education and include the following: Classes for test preparation, such as the Scholastic Aptitude Test (SAT); counseling about college; information about financial aid and scholarships; help completing college or loan applications; or tutoring while in college. Indicate whether the youth received post-secondary educational support during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(23) *Career preparation.* Career preparation services focus on developing a youth's ability to find, apply for, and retain appropriate employment. Career preparation includes the following types of instruction and support services: Vocational and career assessment, including career exploration and planning, guidance in setting and assessing vocational and career interests and skills, and help in matching interests and abilities with vocational goals; job seeking and job placement support, including identifying potential employers, writing resumes, completing job applications, developing interview skills, job shadowing, receiving job referrals, using career resource libraries,

understanding employee benefits coverage, and securing work permits; retention support, including job coaching; learning how to work with employers and other employees; understanding workplace values such as timeliness and appearance; and understanding authority and customer relationships. Indicate whether the youth received career preparation services during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(24) *Employment programs or vocational training.* Employment programs and vocational training are designed to build a youth's skills for a specific trade, vocation, or career through classes or onsite training. Employment programs include a youth's participation in an apprenticeship, internship, or summer employment program and do not include summer or after-school jobs secured by the youth alone. Vocational training includes a youth's participation in vocational or trade programs and the receipt of training in occupational classes for such skills as cosmetology, auto mechanics, building trades, nursing, computer science, and other current or emerging employment sectors. Indicate whether the youth attended an employment program or received vocational training during the reporting period that was paid for or provided by the State agency, with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(25) *Budget and financial management.* Budget and financial management assistance includes the following types of training and practice: Living within a budget; opening and using a checking and savings account; balancing a checkbook; developing consumer awareness and smart shopping skills; accessing information about credit, loans and taxes; and filling out tax forms. Indicate whether the youth received budget and financial management assistance during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(26) *Housing education and home management training.* Housing education includes assistance or training in locating and maintaining housing, including filling out a rental application and acquiring a lease, handling security deposits and utilities, understanding practices for keeping a healthy and safe home, understanding tenants rights and responsibilities, and handling landlord complaints. Home management includes instruction in food preparation, laundry, housekeeping, living cooperatively, meal planning, grocery shopping and basic maintenance and repairs. Indicate whether the youth received housing education or home management training during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(27) *Health education and risk prevention.* Health education and risk prevention includes providing information about: Hygiene, nutrition, fitness and exercise, and first aid; medical and dental care benefits, health care resources and insurance, prenatal care and maintaining personal medical records; sex education, abstinence education, and HIV prevention, including education and information about sexual development and sexuality, pregnancy prevention and family planning, and sexually transmitted diseases and AIDS; substance abuse prevention and intervention, including education and information about the effects and consequences of substance use (alcohol, drugs, tobacco) and substance avoidance and intervention. Health education and risk prevention does not include the youth's actual receipt of direct medical care or substance abuse treatment. Indicate whether the youth received these services during the reporting period that were paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(28) *Family support and healthy marriage education.* Such services include education and information about safe and stable families, healthy marriages, spousal communication, parenting, responsible fatherhood, childcare skills,

teen parenting, and domestic and family violence prevention. Indicate whether the youth received these services that were paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(29) *Mentoring.* Mentoring means that the youth has been matched with a screened and trained adult for a one-on-one relationship that involves the two meeting on a regular basis. Mentoring can be short-term, but it may also support the development of a long-term relationship. While youth often are connected to adult role models through school, work, or family, this service category only includes a mentor relationship that has been facilitated, paid for or provided by the State agency or its staff. Indicate whether the youth received mentoring services that were paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(30) *Supervised independent living.* Supervised independent living means that the youth is living independently under a supervised arrangement that is paid for or provided by the State agency. A youth in supervised independent living is not supervised 24 hours a day by an adult and often is provided with increased responsibilities, such as paying bills, assuming leases, and working with a landlord, while under the supervision of an adult. Indicate whether the youth was living in a supervised independent living setting that was paid or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(31) *Room and board financial assistance.* Room and board financial assistance is a payment that is paid for or provided by the State agency for room and board, including rent deposits, utilities, and other household start-up expenses. Indicate whether the youth received financial assistance for room and board that was paid for or provided by during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(32) *Education financial assistance.* Education financial assistance is a payment that is paid for or provided by the State agency for education or training, including allowances to purchase textbooks, uniforms, computers, and other educational supplies; tuition assistance; scholarships; payment for educational preparation and support services (i.e., tutoring), and payment for GED and other educational tests. This financial assistance also includes vouchers for tuition or vocational education or tuition waiver programs paid for or provided by the State agency. Indicate whether the youth received education financial assistance during the reporting period that was paid for or provided by the State agency with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(33) *Other financial assistance.* Other financial assistance includes any other payments made or provided by the State agency to help the youth live independently. Indicate whether the youth received any other financial assistance that was paid for or provided by the State agency during the reporting period with a ''yes'' or ''no'' as appropriate. If the youth is not in the served population this element must be left blank.

(34) *Outcomes reporting status.* The outcomes reporting status represents the youth's participation, or lack thereof, in the outcomes data collection. If the State agency collects and reports information on any of the data elements in paragraphs (g)(37) through (g)(58) of this section for a youth in the baseline or follow-up sample or population, indicate that the youth participated. If a youth is in the baseline or follow-up sample or population, but the State agency is unable to collect the information, indicate the reason and leave the data elements in paragraph (g)(37) through (g)(58) of this section blank. If a 19-year old youth in the follow-up population is not in the sample, indicate that the youth is not in the sample. If the youth is not in the baseline or follow-up population this element must be left blank.

(i) *Youth participated.* The youth participated in the outcome survey, either fully or partially.

(ii) *Youth declined.* The State agency located the youth successfully and invited the youth's participation, but the youth declined to participate in the data collection.

(iii) *Parent declined.* The State agency invited the youth's participation, but the youth's parent/guardian declined to grant permission. This response may be used only when the youth has not reached the age of majority in the State and State law or policy requires a parent/guardian's permission for the youth to participate in information collection activities.

(iv) *Incapacitated.* The youth has a permanent or temporary mental or physical condition that prevents him or her from participating in the outcomes data collection.

(v) *Incarcerated.* The youth is unable to participate in the outcomes data collection because of his or her incarceration.

(vi) *Runaway/missing.* A youth in foster care is known to have run away or be missing from his or her foster care placement.

(vii) *Unable to locate/invite.* The State agency could not locate a youth who is not in foster care or otherwise invite such a youth's participation.

(viii) *Death.* The youth died prior to his participation in the outcomes data collection.

(ix) *Not in sample.* The 19-year-old youth participated in the outcomes data collection as a part of the baseline population at age 17, but the youth is not in the State's follow-up sample. This response option applies only when the outcomes data collection is required on the follow-up population of 19-year-old youth.

(35) *Date of outcome data collection.* The date of outcome data collection is the latest date that the agency collected data from a youth for the elements described in paragraphs (g)(38) through (g)(58) of this section. Indicate the month, day and year of the outcomes data collection. If the youth is not in the baseline or follow-up population this element must be left blank.

(36) *Foster care status—outcomes.* The youth is in foster care if the youth is under the placement and care responsibility of the State title IV–B/IV–E agency in accordance with the definition of foster care in 45 CFR 1355.20. Indicate whether the youth is in foster care on the date of outcomes data collection with a ''yes'' or ''no'' as appropriate. If the youth is not in the baseline or follow-up population this element must be left blank.

(37) *Current full-time employment.* A youth is employed full-time if employed at least 35 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed full-time, with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(38) *Current part-time employment.* A youth is employed part-time if employed between one and 34 hours per week, in one or multiple jobs, as of the date of the outcome data collection. Indicate whether the youth is employed part-time, with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(39) *Employment-related skills.* A youth has obtained employment-related skills if the youth completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid, in the past year. The experience must help the youth acquire employment-related skills, such as specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment. Indicate whether the youth has obtained employment-related skills, with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(40) *Social Security.* A youth is receiving some form of Social Security if receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), either directly or as a dependent beneficiary as of the date of

the outcome data collection. SSI payments are made to eligible low-income persons with disabilities. SSDI payments are made to persons with a certain amount of work history who become disabled. A youth may receive SSDI payments through a parent. Indicate whether the youth is receiving a form of Social Security payments, with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(41) *Educational aid.* A youth is receiving educational aid if using a scholarship, voucher (including education or training vouchers pursuant to section 477(h)(2) of the Social Security Act), grant, stipend, student loan, or other type of educational financial aid to cover educational expenses as of the date of the outcome data collection. Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. ''Student loan'' means a government-guaranteed, low-interest loan for students in post-secondary education. Indicate whether the youth is receiving educational aid with a ''yes'' or ''no'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(42) *Public financial assistance.* A youth is receiving public financial assistance if receiving ongoing cash welfare payments from the government to cover some of his or her basic needs, as of the date of the outcome data collection. Public financial assistance does not include government payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance. Indicate whether the youth is receiving public financial assistance, with ''yes'' or ''no'' as appropriate, and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(43) *Public food assistance.* A youth is receiving public food assistance if receiving food stamps in any form (i.e., government-sponsored checks, coupons or debit cards) to buy eligible food at authorized stores as of the date of the outcome data collection. This definition includes receiving public food assistance through the Women, Infants, and Children (WIC) program. Indicate whether the youth is receiving some form of public food assistance with ''yes'' or ''no,'' and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(44) *Public housing assistance.* A youth is receiving public housing assistance if the youth is living in government-funded public housing, or receiving a government-funded housing voucher to pay for part of his/her housing costs as of the date of the outcome data collection. CFCIP room and board payments are not included in this definition. Indicate whether the youth is receiving housing assistance with ''yes'' or ''no'' and ''not applicable'' for a youth still in foster care. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(45) *Other financial support.* A youth has other financial support if receiving any other periodic and/or significant financial resources or support from another source not listed in the elements described in paragraphs (g)(41) through (g)(44) of this section as of the date of outcome data collection. Such support can include payments from a spouse or family member (biological, foster or adoptive), child support that the youth receives for him or herself, or funds from a legal settlement. This definition does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child, or other financial support which does not benefit the youth directly in supporting himself or herself. Indicate whether the youth is receiving any other financial support with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not

in the baseline or follow-up population this element must be left blank.

(46) *Highest educational certification received.* A youth has received an education certificate if the youth has a high school diploma or general equivalency degree (GED), vocational certificate, vocational license, associate's degree (e.g., A.A.), bachelor's degree (e.g., B.A. or B.S.), or a higher degree as of the date of the outcome data collection. Indicate the highest degree that the youth has received. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(i) A vocational certificate is a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology.

(ii) A vocational license is a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business.

(iii) An associate's degree is generally a two-year degree from a community college.

(iv) A bachelor's degree is a four-year degree from a college or university.

(v) A higher degree indicates a graduate degree, such as a Master's Degree or a Juris Doctor (J.D.).

(vi) None of the above means that the youth has not received any of the above educational certifications.

(47) *Current enrollment and attendance.* Indicate whether the youth is enrolled in and attending high school, GED classes, or postsecondary vocational training or college, as of the date of the outcome data collection. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session. Indicate whether the youth is currently enrolled and attending school with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(48) *Connection to adult.* A youth has a connection to an adult if, as of the date of the outcome data collection, the youth knows an adult who he or she can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship when celebrating personal achievements. The adult must be easily accessible to the youth, either by telephone or in person. This can include, but is not limited to adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. Indicate whether the youth has such a connection with an adult with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(49) *Homelessness.* A youth is considered to have experienced homelessness if the youth had no regular or adequate place to live. This definition includes situations where the youth is living in a car or on the street, or staying in a homeless or other temporary shelter. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experiences. For a 19- or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate if the youth has been homeless with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(50) *Substance abuse referral.* A youth has received a substance abuse referral if the youth was referred for an alcohol or drug abuse assessment or counseling. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. This definition includes either a self-referral or referral by a social worker, school staff, physician, mental health worker, foster parent, or other adult. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use. Indicate whether the youth had a substance abuse referral with a ''yes'' or ''no.'' If the youth does not answer this

question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(51) *Incarceration.* A youth is considered to have been incarcerated if the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with allegedly committing a crime (misdemeanor or felony). For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element relates to the youth's experience in the past two years. Indicate whether the youth was incarcerated with a ''yes'' or ''no''. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(52) *Children.* A youth is considered to have a child if the youth has given birth herself, or the youth has fathered any children who were born. For a 17-year-old youth in the baseline population, the data element relates to a youth's lifetime experience. For a 19-or 21-year-old youth in the follow-up population, the data element refers to children born to the youth in the past two years only. This refers to biological parenthood. Indicate whether the youth had a child with a ''yes'' or ''no.'' If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(53) *Marriage at child's birth.* A youth is married at the time of the child's birth if he or she was united in matrimony according to the laws of the State to the child's other parent. Indicate whether the youth was married to the child's other parent at the time of the birth of any child reported in the element described in paragraph (g)(52) of this section with a ''yes'' or ''no''. If the youth does not answer this question, indicate ''declined.'' If the answer to the element described in paragraph (g)(52) of this section is ''no,'' indicate ''not applicable.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(54) *Medicaid.* A youth is receiving Medicaid if the youth is participating in a Medicaid-funded State program, which is a medical assistance program supported by the Federal and State government under title XIX of the Social Security Act as of the date of outcomes data collection. Indicate whether the youth receives Medicaid with ''yes,'' ''no,'' or ''don't know'' as appropriate. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(55) *Other health insurance coverage.* A youth has other health insurance if the youth has a third party pay (other than Medicaid) for all or part of the costs of medical care, mental health care, and/or prescription drugs, as of the date of the outcome data collection. This definition includes group coverage offered by employers, schools or associations, an individual health plan, self-employed plans, or inclusion in a parent's insurance plan. This also could include access to free health care through a college, Indian Health Service, or other source. Medical or drug discount cards or plans are not insurance. Indicate ''yes'', ''no'', or ''don't know'' as appropriate. If the youth does not answer this question, indicate ''declined.''

(56) *Health insurance type: Medical.* If the youth has indicated that he or she has health insurance coverage in the element described in paragraph (g)(55) of this section, indicate whether the youth has insurance that pays for all or part of medical health care services. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not applicable'' if the youth did not indicate any health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(57) *Health insurance type: Mental health.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance that pays for all or part of the costs for mental health care services, such as counseling or therapy. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not

applicable'' if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(58) *Health insurance type: Prescription drugs.* If the youth has indicated that he or she has medical health insurance coverage as described in paragraph (g)(56) of this section, indicate whether the youth has insurance coverage that pays for part or all of the costs of some prescription drugs. Indicate ''yes'', ''no'', or ''don't know'' as appropriate, or ''not applicable'' if the youth did not indicate having medical health insurance coverage. If the youth does not answer this question, indicate ''declined.'' If the youth is not in the baseline or follow-up population this element must be left blank.

(h) *Electronic reporting.* The State agency must report all data to ACF electronically according to ACF's specifications and appendix A of this part.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number OMB 0970–0340. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

§ 1356.84 Sampling.

(a) The State agency may collect and report the information required in section 1356.83(e) of this part on a sample of the baseline population consistent with the sampling requirements described in paragraphs (b) and (c) of this section.

(b) The State agency must select the follow-up sample using simple random sampling procedures based on random numbers generated by a computer program, unless ACF approves another sampling procedure. The sampling universe consists of youth in the baseline population consistent with 45 CFR 1356.81(b) who participated in the State agency's data collection at age 17.

(c) The sample size is based on the number of youth in the baseline population who participated in the State agency's data collection at age 17.

(1) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is 5,000 or less, the State agency must calculate the sample size using the formula in appendix C of this part, with the Finite Population Correction (FPC). The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size may not be larger than the number of youth who participated in data collection at age 17.

(2) If the number of youth in the baseline population who participated in the outcome data collection at age 17 is greater than 5,000, the State agency must calculate the sample size using the formula in appendix C of this part, without the FPC. The State agency must increase the resulting number by 30 percent to allow for attrition, but the sample size must not be larger than the number of youth who participated in data collection at age 17.

[73 FR 10365, Feb. 26, 2008]

§ 1356.85 Compliance.

(a) *File submission standards.* A State agency must submit a data file in accordance with the following file submission standards:

(1) *Timely data.* The data file must be received in accordance with the reporting period and timeline described in section 1356.83(a) of this part;

(2) *Format.* The data file must be in a format that meets ACF's specifications; and

(3) *Error-free information.* The file must contain data in the general and demographic elements described in section 1356.83(g)(1) through (g)(5), (g)(14), and (g)(36) of this part that is 100 percent error-free as defined in paragraph (c) of this section.

(b) *Data standards.* A State agency also must submit a file that meets the following data standards:

(1) *Error-free.* The data for the applicable demographic, service and outcomes elements defined in section 1356.83(g)(6) through (13), (g)(15) through (35) and (g)(37) through (58) of this part must be 90 percent error-free as described and assessed according to paragraph (c) of this section.

(2) *Outcomes universe.* In any Federal fiscal year for which the State agency is required to submit information on the follow-up population, the State agency must submit a youth record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each youth for whom the State agency reported outcome information as part of the baseline population. Alternatively, if the State agency has elected to conduct sampling in accordance with section 1356.84 of this part, the State agency must submit a record containing at least outcomes data for the outcomes status element described in section 1356.83(g)(34) of this part on each 19-year-old youth in the follow-up population, inclusive of those youth who are not in the sample, and each 21-year-old youth in the follow-up sample.

(3) *Outcomes participation rate.* The State agency must report outcome information on each youth in the follow-up population at the rates described in paragraphs (b)(3)(i) through (iii) of this section. A youth has participated in the outcomes data collection if the State agency collected and reported a valid response (i.e., a response option other than ''declined'' or ''not applicable'') to any of the outcomes-related elements described in section 1356.83(g)(37) through (g)(58) of this part. ACF will exclude from the calculation of the participation rate any youth in the follow-up population who is reported as deceased, incapacitated or incarcerated in section 1356.83(g)(34) at the time information on the follow-up population is required.

(i) *Foster care youth participation rate.* The State agency must report outcome information on at least 80 percent of youth in the follow-up population who are in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(ii) *Discharged youth participation rate.* The State agency must report outcome information on at least 60 percent of youth in the follow-up population who are not in foster care on the date of outcomes data collection as indicated in section 1356.83(g)(35) and (g)(36) of this part.

(iii) *Effect of sampling on participation rates.* For State agencies electing to sample in accordance with section 1356.84 and appendix C of this part, ACF will apply the outcome participation rates in paragraphs (b)(2)(i) and (ii) of this section to the required sample size for the State.

(c) *Errors.* ACF will assess each State agency's data file for the following types of errors: Missing data, out-of-range data, or internally inconsistent data. The amount of errors acceptable for each reporting period is described in paragraphs (a) and (b) of this section.

(1) Missing data is any element that has a blank response when a blank response is not a valid response option as described in section 1356.83(g) of this part.

(2) Out-of-range data is any element that contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in section 1356.83(g) of this part; and

(3) Internally inconsistent data is any element that fails an internal consistency check designed to evaluate the logical relationship between elements in each record. The evaluation will identify all elements involved in a particular check as in error.

(d) *Review for compliance.* (1) ACF will determine whether a State agency's data file for each reporting period is in compliance with the file submission standards and data standards in paragraphs (a) and (b) of this section.

(i) For State agencies that achieve the file submission standards, ACF will determine whether the State agency's data file meets the data standards.

(ii) For State agencies that do not achieve the file submission standards or data standards, ACF will notify the State agency that they have an opportunity to submit a corrected data file by the end of the subsequent reporting period in accordance with paragraph (e) of this section.

(2) ACF may use monitoring tools or assessment procedures to determine whether the State agency is meeting all the requirements of section 1356.81 through 1356.85 of this part.

(e) *Submitting corrected data and noncompliance.* A State agency that does not submit a data file that meets the standards in section 1356.85 of this part will have an opportunity to submit a corrected data file in accordance with paragraphs (e)(1) and (e)(2) of this section.

(1) A State agency must submit a corrected data file no later than the end of the subsequent reporting period as defined in section 1356.83(a) of this part (i.e., by September 30 or March 31).

(2) If a State agency fails to submit a corrected data file that meets the compliance standards in section 1356.85 of this part and the deadline in paragraph (e)(1) of this section, ACF will make a final determination that the State is out of compliance, notify the State agency, and apply penalties as defined in section 1356.86 of this part.

[73 FR 10365, Feb. 26, 2008]

§ 1356.86 Penalties for noncompliance.

(a) *Definition of Federal funds subject to a penalty.* The funds that are subject to a penalty are the CFCIP funds allocated or reallocated to the State agency under section 477(c)(1) of the Act for the Federal fiscal year that corresponds with the reporting period for which the State agency was required originally to submit data according to section 1356.83(a) of this part.

(b) *Assessed penalty amounts.* ACF will assess penalties in the following amounts, depending on the area of noncompliance:

(1) *Penalty for not meeting file submission standards.* ACF will assess a penalty in an amount equivalent to two and one half percent (2.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the file submission standards defined in section 1356.85(a) of this part.

(2) *Penalty for not meeting certain data standards.* ACF will assess a penalty in an amount equivalent to:

(i) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the data standard for error-free data as defined in section 1356.85(b)(1) of this part.

(ii) One and one quarter percent (1.25%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the outcome universe standard defined in section 1356.85(b)(2) of this part.

(iii) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for youth in foster care standard defined in section 1356.85(b)(3)(i) of this part.

(iv) One half of one percent (0.5%) of the funds subject to a penalty for each reporting period in which ACF makes a final determination that the State agency's data file does not comply with the participation rate for discharged youth standard defined in section 1356.85(b)(3)(ii) of this part.

(c) *Calculation of the penalty amount.* ACF will add together any assessed penalty amounts described in paragraphs (b)(1) or (b)(2) of this section to determine the total calculated penalty result. If the total calculated penalty result is less than one percent of the funds subject to a penalty, the State agency will be penalized in the amount of one percent.

(d) *Notification of penalty amount.* ACF will advise the State agency in writing of a final determination of noncompliance and the amount of the total calculated penalty as determined in paragraph (c) of this section.

(e) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.18.

(f) *Appeals.* The State agency may appeal, pursuant to 45 CFR part 16, ACF's final determination to the HHS Departmental Appeals Board.

[73 FR 10365, Feb. 26, 2008, as amended at 77 FR 952, Jan. 6, 2012]

APPENDIX A TO PART 1356—NYTD DATA ELEMENTS

Element No.	Element name	Responses options	Applicable population
1	State	2 digit FIPS code.	
2	Report date	CYYMM. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12).	
3	Record number	Encrypted, unique person identification number.	
4	Date of birth	CCYYMMDD. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD= day (01–31).	
5	Sex	Male. Female.	
6	Race—American Indian or Alaska Native.	Yes No.	All youth in served, baseline and follow-up populations.
7	Race—Asian	Yes. No.	
8	Race—Black or African American	Yes. No.	
9	Race—Native Hawaiian or Other Pacific Islander.	Yes. No.	
10	Race—White	Yes. No.	
11	Race—Unknown	Yes. No.	
12	Race—Declined	Yes. No.	
13	Hispanic or Latino Ethnicity	Yes. No. Unknown. Declined.	
14	Foster care status—services	Yes No.	Served population only.
15	Local agency	FIPS code(s). Centralized unit.	
16	Federally-recognized tribe	Yes. No.	
17	Adjudicated delinquent	Yes. No.	
18	Education level	Less than 6th grade 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Postsecondary education or training. College, at least one semester.	Served population only.
19	Special education	Yes. No.	
20	Independent living needs assessment.	Yes. No.	
21	Academic support	Yes. No.	
22	Post-secondary educational support.	Yes. No.	
23	Career preparation	Yes. No.	
24	Employment programs or vocational training.	Yes. No.	
25	Budget and financial management	Yes. No.	
26	Housing education and home management training.	Yes.	

Element No.	Element name	Responses options	Applicable population
		No.	
27	Health education and risk prevention.	Yes.	
		No.	
28	Family Support/Healthy Marriage Education.	Yes.	
		No.	
29	Mentoring	Yes.	
		No.	
30	Supervised independent living	Yes.	
		No.	
31	Room and board financial assistance.	Yes.	
		No.	
32	Education financial assistance	Yes.	
		No.	
33	Other financial assistance	Yes.	
		No.	
34	Outcomes reporting status	Youth Participated Youth Declined. Parent Declined. Youth Incapacitated. Incarcerated. Runaway/Missing. Unable to locate/invite. Death. Not in sample.	Baseline and follow-up populations (with the exception of the response option ''not in sample'' which is applicable to 19-year olds in the follow-up only).
35	Date of outcome data collection	CCYYMMDD CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD = day (01–31).	Baseline and follow-up populations.
36	Foster care status-outcomes	Yes.	
		No.	
37	Current full-time employment	Yes.	
		No.	
		Declined.	
38	Current part-time employment	Yes.	
		No.	
		Declined.	
39	Employment-related skills	Yes.	
		No.	
		Declined.	
40	Social Security	Yes.	
		No.	
		Declined.	
41	Educational aid	Yes.	
		No.	
		Declined.	
42	Public financial assistance	Yes No. Not applicable. Declined.	Follow-up population not in foster care.
43	Public food assistance	Yes. No. Not applicable. Declined.	
44	Public housing assistance	Yes. No. Not applicable. Declined.	
45	Other financial support	Yes No. Declined.	Baseline and follow-up population.
46	Highest educational certification received.	High school diploma/GED. Vocational certificate. Vocational license. Associate's degree. Bachelor's degree. Higher degree. None of the above.	

Element No.	Element name	Responses options	Applicable population
		Declined.	
47	Current enrollment and attendance.	Yes. No. Declined.	
48	Connection to adult	Yes. No. Declined.	
49	Homelessness	Yes. No. Declined.	
50	Substance abuse referral	Yes. No. Declined.	
51	Incarceration	Yes. No. Declined.	
52	Children	Yes. No. Declined.	
53	Marriage at child's birth	Yes. No. Not applicable. Declined.	
54	Medicaid	Yes. No. Don't know. Declined.	
55	Other health insurance	Yes No. Don't know. Declined.	Baseline and follow-up population.
56	Health insurance type—medical	Yes. No. Don't know. Not Applicable. Declined.	
57	Health insurance type—mental health.	Yes. No. Don't know. Not applicable. Declined.	
58	Health insurance type—prescription drugs.	Yes. No. Don't know. Not applicable. Declined.	

[77 FR 952, Jan. 6, 2012]

APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY

Topic/element No.	Question to youth and response options	Definition
INFORMATION TO COLLECT FROM ALL YOUTH SURVEYED FOR OUTCOMES, WHETHER IN FOSTER CARE OR NOT		
Current full-time employment (37).	Currently are you employed full-time? __Yes __No __Declined	"Full-time" means working at least 35 hours per week at one or multiple jobs.
Current part-time employment (38).	Currently are you employed part-time? __Yes __No __Declined	"Part-time" means working at least 1–34 hours per week at one or multiple jobs.

Topic/element No.	Question to youth and response options	Definition
Employment-related skills (39)	In the past year, did you complete an apprenticeship, internship, or other on-the-job training, either paid or unpaid? __Yes __No __Declined	This means apprenticeships, internships, or other on-the-job trainings, either paid or unpaid, that helped the youth acquire employment-related skills (which can include specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment).
Social Security (40)	Currently are you receiving social security payments (Supplemental Security Income (SSI, Social Security Disability Insurance (SSDI), or dependents' payments)? __Yes __No __Declined	These are payments from the government to meet basic needs for food, clothing, and shelter of a person with a disability. A youth may be receiving these payments because of a parent or guardian's disability, rather than his/her own.
Educational Aid (41)	Currently are you using a scholarship, grant, stipend, student loan, voucher, or other type of educational financial aid to cover any educational expenses? __Yes __No __Declined	Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. ''Student loan'' means a government-guaranteed, low-interest loan for students in post-secondary education.
Other financial support (45)	Currently are you receiving any periodic and/or significant financial resources or support from another source not previously indicated and excluding paid employment? __Yes __No __Declined	This means periodic and/or significant financial support from a spouse or family member (biological, foster or adoptive), child support that the youth receives or funds from a legal settlement. This does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child or other financial help that does not benefit the youth directly in supporting himself or herself.
Highest educational certification received (46).	What is the highest educational degree or certification that you have received? __High school diploma/GED __Vocational certificate __Vocational license __Associate's degree (e.g., A.A.) __Bachelor's degree (e.g., B.A. or B.S.) __Higher degree __None of the above __Declined	''Vocational certificate'' means a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology. ''Vocational license'' means a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business. An Associate's degree is generally a two-year degree from a community college, and a Bachelor's degree is a four-year degree from a college or university. ''Higher degree'' indicates a graduate degree, such as a Masters or Doctorate degree. ''None of the above'' means that the youth has not received any of the above educational certifications.
Current enrollment and attendance (47).	Currently are you enrolled in and attending high school, GED classes, post-high school vocational training, or college? __Yes __No __Declined	This means both enrolled in and attending high school, GED classes, or postsecondary vocational training or college. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session (e.g., Spring break, summer vacation, etc.).
Connection to adult (48)	Currently is there at least one adult in your life, other than your caseworker, to whom you can go for advice or emotional support? __Yes __No __Declined	This refers to an adult who the youth can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship to share personal achievements. This can include, but is not limited to, adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. The adult must be easily accessible to the youth, either by telephone or in person.
Homelessness (49)	Have you ever been homeless? OR __In the past two years, were you homeless at any time? __Yes __No __Declined	''Homeless'' means that the youth had no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.

Topic/element No.	Question to youth and response options	Definition
Substance abuse referral (50)	Have you ever referred yourself or has someone else referred you for an alcohol or drug abuse assessment or counseling? OR In the past two years, did you refer yourself, or had someone else referred you for an alcohol or drug abuse assessment or counseling? __Yes __No __Declined	This includes either self-referring or being referred by a social worker, school staff, physician, mental health worker, foster parent, or other adult for an alcohol or drug abuse assessment or counseling. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use.
Incarceration (51)	Have you ever been confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? OR In the past two years, were you confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? __Yes __No __Declined	This means that the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with a crime (misdemeanor or felony) allegedly committed by the youth.
Children (52)	Have you ever given birth or fathered any children that were born? OR In the past two years, did you give birth to or father any children that were born? __Yes __No __Declined	This means giving birth to or fathering at least one child that was born. If males do not know, answer ''No.''
Marriage at Child's Birth (53)	If you responded yes to the previous question, were you married to the child's other parent at the time each child was born? __Yes __No __Declined	This means that when every child was born the youth was married to the other parent of the child.
Medicaid (54)	Currently are you on Medicaid [or use the name of the State's medical assistance program under title XIX]? __Yes __No __Don't know __Declined	Medicaid (or the State medical assistance program) is a health insurance program funded by the government.
Other Health insurance Coverage (55).	Currently do you have health insurance, other than Medicaid? __Yes __No __Don't know __Declined	''Health insurance'' means having a third party pay for all or part of health care. Youth might have health insurance such as group coverage offered by employers or schools, or individual policies that cover medical and/or mental health care and/or prescription drugs, or youth might be covered under parents' insurance. This also could include access to free health care through a college, Indian Tribe, or other source.
Health insurance type—medical (56).	Does your health insurance coverage include coverage for medical services? __Yes __No __Don't know __Not Applicable __Declined	This means that the youth's health insurance covers at least some medical services or procedures. This question is for only those youth who responded ''yes'' to having health insurance.

Topic/element No.	Question to youth and response options	Definition
Health insurance type—mental health (57).	Does your health insurance include coverage for mental health services? __Yes __No __Don't know Not Applicable __Declined	This means that the youth's health insurance covers at least some mental health services. This question is for only those youth who responded "yes" to having health insurance with medical coverage.
Health insurance type—prescription drugs (58).	Does your health insurance include coverage for prescription drugs? __Yes __No __Don't know __Declined	This means that the youth's health insurance covers at least some prescription drugs. This question is for only those youth who responded "yes" to having health insurance with medical coverage.
ADDITIONAL OUTCOMES INFORMATION TO COLLECT FROM YOUTH OUT OF FOSTER CARE		
Public financial assistance (42)	Currently are you receiving ongoing welfare payments from the government to support your basic needs? [The State may add and/or substitute the name(s) of the State's welfare program]. __Yes __No __Declined	This refers to ongoing welfare payments from the government to support your basic needs. Do not consider payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance in this category.
Public food assistance (43)	Currently are you receiving public food assistance? __Yes __No __Declined	Public food assistance includes food stamps, which are government-issued coupons or debit cards that recipients can use to buy eligible food at authorized stores. Public food assistance also includes assistance from the Women, Infants and Children (WIC) program.
Public housing assistance (44)	Currently are you receiving any sort of housing assistance from the government, such as living in public housing or receiving a housing voucher? __Yes __No __Declined	Public housing is rental housing provided by the government to keep rents affordable for eligible individuals and families, and a housing voucher allows participants to choose their own housing while the government pays part of the housing costs. This does not include payments from the child welfare agency for room and board payments.

[77 FR 952, Jan. 6, 2012]

Appendix C to Part 1356—Calculating Sample Size for NYTD Follow-Up Populations

1. Using Finite Population Correction

The Finite Population Correction (FPC) is applied when the sample is drawn from a population of one to 5,000 youth, because the sample is more than five percent of the population.

$$\bullet\ \text{Sample size with FPC} = \frac{(\text{Py})\ (\text{Pn}) + \text{Std. error}^2}{\text{Std. error}^2 + \frac{(\text{Py})\ (\text{Pn})}{\text{N}}}$$

• (Py)(Pn), an estimate of the percent of responses to a dichotomous variable, is (.50)(.50) for the most conservative estimate.

$$\bullet\ \text{Standard error} = \frac{\text{Acceptable level of error}}{\text{Z coefficient}}$$

• Acceptable level of error = .05 (results are plus or minus five percentage points from the actual score)
• Z = 1.645 (90 percent confidence interval)

$$\bullet\ \text{Standard error, 90 percent confidence interval} = \frac{.05}{1.645} = .0303951$$

• N = number of youth from whom the sample is being drawn

2. Not Using Finite Population Correction

The FPC is not applied when the sample is drawn from a population of over 5,000 youth.

$$\bullet\ \text{Sample size without FPC, 90 percent confidence interval} = \frac{(Py)\,(Pn)}{\text{Std. Error}^2} = \frac{(.50)\,(.50)}{(.0303951)^2} = 271$$

[73 FR 10372, Feb. 26, 2008]

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

Sec.

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1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).
1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

AUTHORITY: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian Tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV-B of the Act.

(b) *Eligibility.* Child and family services under title IV-B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian Tribe's jurisdiction.

(c) *Definitions.*

Child and Family Services Plan (CFSP) means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services; services to support reunification, adoption, kinship care, foster care, independent living, or other permanent living arrangements). For Indian Tribes, the document describes the child welfare and/or family preservation and support services to be provided by the Indian Tribe; includes goals and objectives both for improved outcomes for the safety, permanency and well-being of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

Child welfare services means public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare and safety of all children, including individuals with disabilities; homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families

by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed and may be safely returned, by the provision of services to the child and the family;

(5) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and

(6) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate.

Children refers to individuals from birth to the age of 21 (or such age of majority as provided under State law) including infants, children, youth, adolescents, and young adults.

Community-based services refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

Families includes, but is not limited to, biological, adoptive, foster, and extended families.

Family preservation services refers to services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including—

(1) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;

(2) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(6) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.

Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Transportation, information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such

children, and assistance to families in securing specific services to meet these needs.

Joint planning means an ongoing partnership process between ACF and the State and between ACF and an Indian Tribe in the development, review, analysis, and refinement and/or revision of the State's and the Indian Tribe's child and family services plan. Joint planning involves discussions, consultation, and negotiation between ACF and the State or Indian Tribe in all areas of CFSP creation such as, but not limited to, identifying the service needs of children, youth, and families; selecting the unmet service needs that will be addressed; developing goals and objectives that will result in improving outcomes for children and families; developing a plan to meet the matching requirements; and establishing a more comprehensive, coordinated and effective child and family services delivery system. The expectation of joint planning is that both ACF and the State or Indian Tribe will reach agreement on substantive and procedural matters related to the CFSP.

[61 FR 58655, Nov. 18, 1996]

§ 1357.15 Comprehensive child and family services plan requirements.

(a) *Scope.* (1) The CFSP provides an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family focused services. This section describes the requirements for the development, implementation and phase-in of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs. The Indian Tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) Child welfare services under title IV-B, subpart 1; and

(ii) Family preservation and family support services under title IV-B, subpart 2.

(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV-E, section 477 of the Act; and

(ii) The Child Abuse and Neglect State grant program (known as the Basic State Grant) under the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 et. seq.).

(3) States must meet all requirements of this section except those that apply only to Indian Tribes. Indian Tribes must meet the requirements of this section only as specified.

(4) States and eligible Indian Tribes have the option to phase-in the requirements for a consolidated CFSP. The consolidated CFSP requirements must be in place by June 30, 1997 and meet the requirements of 45 CFR 1357.16.

(b) *Eligibility for funds.* (1) In order to receive funding under title IV-B, subparts 1 and 2, each State and eligible Indian Tribe must submit and have approved a consolidated, five-year Child and Family Services Plan (CFSP) and a CFS–101, Budget Request and Estimated Expenditure Report that meets the requirements under 45 CFR 1357.16.

(2) States and Indian Tribes that are consolidating the requirements for a CFSP in FY 1995, in accordance with §1357.15(a), must submit the CFSP and a CFS–101 for FY 1995 and 1996 by June 30, 1995.

(3) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP in FY 1996 and 1997 must submit the CFSP, the CFS–101 for FY 1995 for subpart 1 and 2, and the CFS–101 for subpart 2 for FY 1996 by June 30, 1995.

(4) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian Tribe), and only after broad consultation by the State (and the Indian Tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(5) By June 30, 1996, each grantee must submit and have approved the first Annual Progress and Services Report and a CFS 101 for FY 1997 that meets the statutory and regulatory requirements of title IV-B, subparts 1 and 2.

(6) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian Tribe) and if it meets the requirements of 45 CFR 1357.16.

(7) The five-year CFSP for FYs 1995–1999 may be submitted in the format of the State's or the Indian Tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The following assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian Tribe's program affects an assurance:

(1) The State or Indian Tribe must assure that it will participate in any evaluations the Secretary of HHS may require.

(2) The State or Indian Tribe must assure that it will administer the CFSP in accordance with methods determined by the Secretary to be proper and efficient.

(3) The State or Indian Tribe must assure that it has a plan for the training and use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of low-income persons, as community service aides; and a plan for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State or Tribe.

(4) The State or Indian Tribe must assure that standards and requirements imposed with respect to child care under title XX shall apply with respect to day care services, if provided under the CFSP, except insofar as eligibility for such services is involved.

(d) *The child and family services plan (CFSP): general.* The State and the Indian Tribe must base the development of the CFSP on a planning process that includes:

(1) broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations, parents, including parents who are involved or have experience with the child welfare system, and others;

(2) coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV-B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV-B and IV-E of the Act and the social services block grant program under title XX of the Act. (See the definition of ''State agency'' in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian Tribal organization administering the program(s).* (1) The Indian Tribe's CFSP must provide the name of the Indian Tribal organization (ITO) designated to administer funds under title IV-B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian Tribe receives funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian Tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to Tribal and other offices operating or administering services programs within the Indian Tribe's service area (e.g., Indian Health Service.)

(g) *Vision Statement.* The CFSP must include a vision statement which articulates the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system. The vision should reflect the service principles at section 1355.25.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during and by the end of the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety, permanency and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, quantifiable and measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian Tribes administering the title IV-B, subpart 1 program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe the methods to be used in measuring the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families. Processes and procedures assuring the production of valid and reliable data and information must be specified. The data and information must be capable of determining whether or not the interim benchmarks and multiyear timetable for accomplishing CFSP goals and objectives are being met.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian Tribe must base the development of the CFSP vision, goals, objectives, and funding and service decisions on an analysis of available baseline information and any trends over time on indicators in the following areas: the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services. Additional and updated information on service needs and organizational capacities must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives cited in the CFSP. A description of how this process will continue to be carried out must be included in the CFSP, and any revisions should be provided in the Annual Progress and Services Report.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact on the ability to preserve and support families may be included in the assessment. The Indian Tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate. An Indian Tribe may submit documentation prepared to satisfy the requirements of other Federal child welfare grants, or contracts (such as the section 638 reporting form), along with a descriptive addendum addressing specifically the family preservation and family support services available.

(3) The CFSP must include a summary of the information used in developing the plan; an explanation of how this information and analysis were

used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will be used to facilitate the coordination of services.

(l) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State; how it led or will lead to improved coordination of services.

(2) The Indian Tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the Tribe's area of jurisdiction.

(3) For States and Indian Tribes, the consultation process must involve:

(i) All appropriate offices and agencies within the State agency or within the Indian Tribal service delivery system (e.g., child protective services (CPS), foster care and adoption, the social services block grant, reunification services, independent living, and other services to youth;)

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, Tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability, children both in and outside the child welfare system, and consumers of services from diverse groups;

(v) For States, representatives of Indian Tribes within the State;

(vi) For States, representatives of local government (e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;)

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian Tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian Tribes with experience in administering family preservation and family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs which may include: Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV-A; runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; Children's Trust Funds; Community-Based Family Resource Programs, and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each

grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services (including mental health, substance abuse, developmental disabilities, and housing) to improve access and deliver a range of services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of services (e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across services providers and compatible and linked automated information systems, co-location of several services or programs.)

(3) The Indian Tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian Tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements.

(2) The Indian Tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, treatment services and foster care) and/or the family support and family preservation services to be provided.

(3) For each service described, the CFSP must include the following information, or it must be listed on the CFS–101, Part II:

(i) The population(s) to be served;

(ii) The geographic area(s) where the services will be available;

(iii) The estimated number of individuals and/or families to be served;

(iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV-B, subparts 1 and 2, the CAPTA program referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV-B, subpart 2 of the Act, will be used to develop or expand family support and family preservation services; how the family support and family preservation services relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family services continuum and the services in other public services systems (e.g.,

health, education, housing, substance abuse, the courts), and other Federal and non-federally funded public and nonprofit private programs (e.g., Children's Trust Funds, Community-Based Family Resource Programs, private foundations.)

(p) *Services in relation to service principles.* The CFSP must describe how the child and family services to be provided are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to be consistent with the other service principles in 45 CFR 1355.25.

(q) *Services in relation to permanency planning.* For States administering both title IV-B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 422(b)(9) and 471 of the Act (e.g., preplacement preventive services, reunification services, independent living services.) The CFSP must describe the arrangements, jointly developed with the Indian Tribes within its borders, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction.

(r) *Decision-making process: selection of family support programs for funding.* The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services.* With each fiscal year's budget request, each State must indicate the specific percentage of family preservation and family support funds (title IV-B, subpart 2) that the State will expend for community-based family support and for family preservation services, and the rationale for the decision. The State must have an especially strong rationale if the request for either percentage is below 25 percent. It must also include an explanation of how this distribution was reached and why it meets the requirements that a ''significant portion'' of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services.

(t) *Staff training, technical assistance, and evaluation.* (1) The State's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan. This training plan also must be combined with the training plan under title IV-E as required by 45 CFR 1356.60(b)(2). Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices. Training content must also support the cross-system coordination consultation basic to the development of the CFSP.

(2) The State's CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State's CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance.* The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian Tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d)). State agencies and Indian Tribal organizations within the State must exchange copies of

their CFSPs and their annual services reports.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58656, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1357.16 Annual progress and services reports.

(a) *Annual progress and services reports.* Annually, each State and each Indian Tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4) of this section, the State and the Indian Tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian Tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, including improved outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, or to the training plan, if necessary, to reflect changed circumstances;

(3) For Indian Tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (non-supplantation) requirement in section 432(a) (7) and (8) of the Act;

(7) For States and eligible Indian Tribes phasing in requirements for a consolidated CFSP, information on activities and progress directed toward a consolidated plan by June 30, 1996 or 1997. The report must include information that demonstrates States' and eligible Indian Tribes' progress toward the consolidation of a CFSP, including activities that have been accomplished and still need to be accomplished; and

(8) Any other information the State or the Indian Tribe wishes to include.

(b) *Submittal of the annual progress and services report and CFS–101.* (1) The State and the Indian Tribe must send the Annual Progress and Services Report and the CFS–101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., the report submitted and made public by June 30, 1996 will describe the services to be provided in FY 1997. The report covering FY 1998 services must be submitted by June 30, 1997.)

(2) In order for States and eligible Indian Tribes to receive title IV-B, subparts 1 and 2 allocations a CFS–101 must be submitted for each fiscal year.

(3) States and Indian Tribes which have consolidated the requirements for title IV-B, subparts 1 and 2, must submit the CFS–101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., for FY 1997 allocations, the CFS–101 must be submitted by June 30, 1996; for FY 1998 allocations, the CFS–101 must be submitted by June 30, 1997.)

(4) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP must:

(i) Submit by June 30, 1996 a CFS–101 for title IV-B, subpart 1 for FY 1996 allocations; a CFS–101 for title IV-B, subpart 2 for FY 1997 allocations; and, if a State or eligible Indian Tribe chooses, a CFS–101 for subpart 1 FY 1997 allocations.

(ii) Submit by June 30, 1997 a CFS–101 for title IV-B, subpart 1 for FY 1997 allocations, if not previously submitted by June 30, 1996; and a CFS–101 for FY 1998 for subparts 1 and 2 allocations.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian Tribe that used FY 1994 funds under title IV-B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian Tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian Tribe must make the Annual Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian Tribe is coordinating services or consulting and to other interested members of the public. Each State and eligible Indian Tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and eligible Indian Tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the States and eligible Indian Tribes must develop a new five-year CFSP following the requirements of 45 CFR 1357.15.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0047. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[61 FR 58659, Nov. 18, 1996, as amended at 66 FR 58677, Nov. 23, 2001]

§ 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of section 106(b) (1) and (2) of the Child Abuse Prevention and Treatment Act, as amended, are met. These requirements relate to the State plan and assurances required for the Child Abuse and Neglect State Grant Program.

[61 FR 58660, Nov. 18, 1996]

§ 1357.25 Requirements for eligibility for additional payments under section 427.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State is not eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the State complies with the requirements of Section 427(a) of the Act.

(b) In meeting the requirements for the inventory and statewide information system in sections 427 (a)(1) and (2)(A) of the Act, the inventory and statewide information system must include those children under the placement and care responsibility of the State title IV-B or IV-E agencies. At the State's discretion, other children may be included. The six month requirement in section 427(a)(1) and the twelve month requirement in section 427(a)(2)(A) of the Act must also be met.

(The requirement has been approved by the Office of Management and Budget under OMB Control Number 0980–0138)

(c) If, for each of any two consecutive fiscal years after FY 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after two such consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for FY 1979 unless the State has implemented the requirements of section 427(b) of the Act.

(d) In meeting the requirements of section 427(a)(2)(B) of the Act for dispositional hearings the State agency must meet the requirements of section 475(5)(C) of the Act and 45 CFR 1356.21(e).

(e) A State may appeal a final decision by ACYF that the State has not met the requirements of this section and section 427 of the Act to the Department Grant Appeals Board under the provisions of 45 CFR part 16.

[48 FR 23118, May 23, 1983]

§ 1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).

(a) *Scope.* The requirements of this section shall apply to all funds allotted or reallotted to States under title IV-B, subpart 1.

(b) *Allotments.* Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments.* Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination.* In the event of a State's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 75.371 through 75.372 will apply.

(e) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 75 with the following conditions—

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(g) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV-B in excess of the Federal payment made in FY 1979 under title IV-B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV-B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV-B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV-B greater than the amount of title IV-B, subpart 1 funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g) (1) and (2) of this section for the fiscal year for which application for funds is being made. Records verifying the required certification shall be maintained by

the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV-B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV-B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when it is determined that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) the State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58660, Nov. 18, 1996, as amended at 81 FR 3023, Jan. 20, 2016]

§ 1357.32 State fiscal requirements (title IV-B, subpart 2, family preservation and family support services).

(a) *Scope.* The requirements of this section apply to all funds allocated to States under title IV-B, subpart 2, of the Act.

(b) *Allotments.* The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments.* Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching or cost sharing.* Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) Federal funds, however, will not exceed the amount of the State's allotment.

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(f) *Maintenance of effort.* States may not use the Federal funds under title IV-B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, ''non-Federal funds'' means State funds. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(g) *Time limits on expenditures.* Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(h) *Administrative costs.* (1) States claiming Federal financial participation for services provided in FY 1994 and subsequent years may not claim more than 10 percent of expenditures under subpart 2 for administrative costs. There is no limit on the percentage of administrative costs which may be reported as State match.

(2) For the purposes of title IV-B, subpart 2, ''administrative costs'' are costs of auxiliary functions as identified through as agency's accounting system which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan) to the title IV-B, subpart 2 program cost centers;

(ii) necessary to sustain the direct effort involved in administering the State plan for title IV-B, subpart 2, or an activity providing service to the program: and

(iii) centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll; personnel functions; management, maintenance and operation of space and

property; data processing and computer services; accounting; budgeting; auditing.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, supervision).

[61 FR 58661, Nov. 18, 1996]

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible Tribal organizations authorized by the membership of the Tribes to act for them is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(b) *Title IV-B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV-B, subpart 1, beginning in FY 1995, the Indian Tribe or Tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian Tribe or Tribal organization must also comply with section 422(b)(1–8) of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single Tribal agency and Governor's review of the CFSP do not apply); and other applicable requirements of §§ 1357.10 and 1357.16.

(c) *Information related to the requirements of Section 422(b)(9) of the Act.* The following information must be submitted with the assurances required to be eligible for title IV-B, subpart 1 funds:

(1) A description of the arrangements, jointly developed with the State, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction;

(2) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(3) A description of Tribal jurisdiction in civil and criminal matters, existence or nonexistence of a Tribal court and the type of court and codes, if any;

(4) An identification of the standards for foster family homes and institutional care and day care;

(5) The Indian Tribal organization's political subdivisions, if any;

(6) Whether the Tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(7) Any limitations on authorities granted to the Indian Tribal organizations; and

(8) The Tribal resolution(s) authorizing an application for a direct title IV-B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian Tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The following fiscal and administrative requirements apply to Indian Tribal grants under this section:

(i) *Enforcement and termination.* In the event of an Indian Tribe's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 75.371 through 75.372 will apply.

(ii) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the

Act in accordance with the grants administration requirements of 45 CFR part 75 with the following conditions—

(A) The ITO's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(B) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(*1*) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(*2*) Foster care maintenance payments, plus;

(*3*) Adoption assistance payments.

(C) Notwithstanding paragraph (d)(5)(ii)(B) of this section, Tribal expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(iii) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(iv) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV-B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the act and revised as appropriate.

[61 FR 58661, Nov. 18, 1996, as amended at 65 FR 4093, Jan. 25, 2000; 81 FR 3023, Jan. 20, 2016]

§ 1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

(a) *Definitions.*

Alaska Native Organization means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination Act (Pub. L. 93–638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

Tribal organization means the recognized governing body of the Indian Tribe.

(b) *Eligibility for funds: FY 1994.* (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian Tribe whose FY 1995 allotment under subpart 2 would be less than $10,000. Therefore, only those Indian Tribes whose FY 1995 allotment is $10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian Tribe is entitled to the Tribal organization of the Indian Tribe.

(c) *Eligibility for funds: FY 1995.* In order to receive funds under title IV-B, subpart 2, in FY 1995, an Indian Tribe that is eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998.* (1) ACF will make grants to additional Indian Tribes in Fys 1996 through 1998 in the event that there are increased appropriations.

(2) Allotments will be calculated in Fys 1996, 1997, and 1998 as required in section 433 of the Act. Those Indian Tribes in each year whose allotment is at least $10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, additional Indian Tribes which become eligible for grants in FY 1996, 1997, and 1998 must submit either a five year Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15 or an application for

planning funds by June 30 of the year in which they first become eligible for grants. Those Indian Tribes which submitted an application for planning funds in their first year of funding must submit a five year CFSP that meets the applicable requirements of 45 CFR 1357.15 by June 30 of the second year they receive funding. For example, in order to receive funds, an Indian Tribe which becomes eligible to receive funding beginning in FY 1996 must submit either an application for planning funds or a CFSP by June 30, 1996. If the Indian Tribe submitted an application for planning funds in FY 1996, they must submit a CFSP by June 30, 1997.

(4) All Indian Tribes will be Federally reimbursed at 75 percent of allowable expenditures. Federal funds without match are available in the first year of receipt of funds for additional Indian Tribes meeting the following criteria:

(i) Submittal of an application for planning funds, and not a five year CFSP;

(ii) Receipt of an initial award in FY 1996 or 1997 or 1998; and

(iii) A proposal to spend the entire grant in the first year on planning.

(e) *Allotments.* Allotments to Indian Tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian Tribe with an approved plan compared to the number of children in all Indian Tribes with approved plans, based on the most current and reliable data available.

(f) *Exemptions of requirements.* (1) ACF has exempted Indian Tribes from three statutory requirements:

(i) The limitation on administrative costs to 10 percent of total Federal and Tribal funds—Indian Tribes may use the indirect cost rate agreement in effect for the Tribe;

(ii) The requirement for maintenance of effort that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(iii) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(2) Specific exemptions from other statutory requirements may be requested by the Tribe in the course of its joint planning. Such a request must contain a compelling reason.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) The Indian Tribe's match must be at least 25 percent of the total project costs or one-third of the Federal share. Federal funds, however, will not exceed the amount of the Indian Tribe's allotment.

(2) The Indian Tribe's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(3) Indian Tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Time limits on expenditures.* An Indian Tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

[61 FR 58662, Nov. 18, 1996]

SUBCHAPTER H—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

PART 1370—FAMILY VIOLENCE PREVENTION AND SERVICES PROGRAMS

Sec.
1370.1 Purpose.
1370.2 State and Indian tribal grants.
1370.3 Information and technical assistance center grants.
1370.4 State domestic violence coalition grants.
1370.5 Public information campaign grants.

AUTHORITY: 42 U.S.C. 10401 *et seq.*

SOURCE: 61 FR 6793, Feb. 22, 1996, unless otherwise noted.

§ 1370.1 Purpose.

This part addresses sections 303, 308, 311, and 314 of the Family Violence Prevention and Services Act (the Act), as amended (42 U.S.C. 10401 *et seq.*). The Act authorizes the Secretary to implement programs for the purposes of increasing public awareness about and preventing family violence; providing immediate shelter and related assistance for victims of family violence and their dependents; and providing for technical assistance and training relating to family violence programs to States, tribes, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), non-profit private organizations and other persons seeking such assistance. All programs authorized under the Act are funded subject to the availability of funds.

§ 1370.2 State and Indian tribal grants.

Each grantee awarded funds under section 303 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.3 Information and technical assistance center grants.

Each grantee awarded funds under section 308 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.4 State domestic violence coalition grants.

Each grantee awarded funds under section 311 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

§ 1370.5 Public information campaign grants.

Each grantee awarded funds under section 314 of the Act must meet the statutory requirements of the Act and all applicable regulations. An announcement which describes the application process, including information on statutory requirements, other applicable regulations, and any required financial and program reports, is published in the FEDERAL REGISTER.

SUBCHAPTER I—THE ADMINISTRATION ON INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, DEVELOPMENTAL DISABILITIES PROGRAM

PARTS 1385–1399 [RESERVED]

SUBCHAPTERS J–K [RESERVED]

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PART 1600—DEFINITIONS

AUTHORITY: 42 U.S.C. 2996.

§ 1600.1 Definitions.

As used in these regulations, chapter XVI, unless otherwise indicated, the term—

Act means the Legal Services Corporation Act, Pub. L. 93–355 (1974), as amended, Pub. L. 95–222 (1977), 42 U.S.C. 2996–29961.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

Attorney means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

Control means the direct or indirect ability to determine the direction of management and policies or to influence the management or operating policies of another organization to the extent that an arm's-length transaction may not be achieved.

Corporation means the Legal Services Corporation established under the Act.

Director of a recipient means a person directly employed by a recipient in an executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

Eligible client means any person determined to be eligible for legal assistance under the Act, these regulations or other applicable law.

Employee means a person employed by the Corporation or by a recipient, or a person employed by a subrecipient whose salary is paid in whole or in major part with funds provided by the Corporation.

Fee generating case means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client from public funds or from an opposing party.

Financial assistance means annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.

Legal assistance means the provisions of any legal services consistent with the purposes and provisions of the Act or other applicable law.

Outside practice of law means the provisions of legal assistance to a client who is not eligible to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

Political means that which relates to engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose.

President means the President of the Corporation.

Public funds means the funds received directly or indirectly from the Corporation or a Federal, State, or local government or instrumentality of a government.

Recipient means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

Staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

Tribal funds means funds received from an Indian tribe or from a private foundation for the benefit of an Indian tribe.

[49 FR 21327, May 21, 1984, as amended at 51 FR 24827, July 9, 1986]

PART 1601 [RESERVED]

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

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1602.3 Policy.
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AUTHORITY: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

SOURCE: 63 FR 41196, Aug. 3, 1998, unless otherwise noted.

§ 1602.1 Purpose.

This part contains the rules and procedures the Legal Services Corporation follows in making records available to the public under the Freedom of Information Act.

§ 1602.2 Definitions.

As used in this part—

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

(b) *Duplication* means the process of making a copy of a requested record pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

(d) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(e) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) *Office of Inspector General records* means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

(g) *Records* means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation (either directly or maintained by a third party under contract to the Corporation for records management purposes), as evidence of the organization, functions, policies, decisions procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purposes.

(h) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news media entities. A freelance journalist shall be regarded as working for a news media entity if the journalist

can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Corporation may also consider the past publication record of the requester in making such a determination.

(i) *Review* means the process of examining documents located in response to a request to determine whether any portion of any such document is exempt from disclosure. It also includes processing any such documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(j) *Search* means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner.

(k) Submitter means any person or entity from whom the Corporation receives grant application records.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this part. Records exempt from disclosure under the FOIA may be made available as a matter of discretion when disclosure is not prohibited by law, and disclosure would not foreseeably harm a legitimate interest of the public, the Corporation, a recipient, or any individual.

§ 1602.4 Records published in the Federal Register.

The Corporation routinely publishes in the FEDERAL REGISTER information on its basic structure and operations necessary to inform the public how to deal effectively with the Corporation. The Corporation will make reasonable efforts to currently update such information, which will include basic information on the Corporation's location, functions, rules of procedure, substantive rules, statements of general policy, and information regarding how the public may obtain information, make submittals or requests, or obtain decisions.

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room its office at 3333 K St. NW., Washington, DC, 20007. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the public reading room:

(1) All final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation that are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to the staff that affect the public or recipients;

(4) Copies of records, regardless of form or format, released to any person in response to a public request for records pursuant to §1602.8 which the Corporation has determined are likely to become subject to subsequent requests for substantially the same records, and a general index of such records;

(5) The current index required by §1602.7;

(6) To the extent feasible, other records considered to be of general interest to recipients or members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities.

(c) Certain records otherwise required by FOIA to be available in the public reading room may be exempt

from mandatory disclosure pursuant to section 552(b) of the FOIA and §1602.9. Such records will not be made available in the public reading room. Other records maintained in the public reading room may be edited by the deletion of identifying details concerning individuals to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion. The extent of the deletion shall be indicated, unless doing so would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) Records required by the FOIA to be maintained and made available in the public reading room that are created by the Corporation on or after November 1, 1996, shall be made available electronically. This includes the index of published and reading room records, which shall indicate which records are available electronically.

(e) Most electronic public reading room records will also be made available to the public on the Corporation's websites at *http://www.lsc.gov* and *http://oig.lsc.gov*.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§1602.6 Procedures for use of public reading room.

Any member of the public may inspect or copy records described in §1602.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records is advised to arrange a time in advance, by telephone or letter request made to the Office of Legal Affairs. Persons submitting requests by telephone will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner provided in §1602.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003]

§1602.7 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of §1602.4 and §1602.5(b) (1) through (5). The index will be maintained and made available for public inspection and copying at the Corporation's office in Washington, DC. The cost of a copy of the index will not exceed the standard charge for duplication set out in §1602.13(e). The Corporation will also make the index available on its websites.

§1602.8 Requests for records.

(a) Except for records required by the FOIA to be published in the FEDERAL REGISTER (§1602.4) or to be made available in the public reading room (§1602.5), Corporation records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and §1602.9.

(b) Requests. Requests for records under this section shall be made in writing, with the envelope and the letter or e-mail request clearly marked Freedom of Information Act Request. All such requests shall be addressed to the Corporation's Office of Legal Affairs or, in the case of requests for records maintained by the Office of Inspector General, to the Office of Inspector General. Requests by letter shall use the address given in §1602.5(a). E-mail requests shall be addressed to *FOIA@lsc.gov* or, in the case of requests for records maintained by the Office of Inspector General, *FOIA@oig.lsc.gov*. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of Legal Affairs, or as appropriate, the Office of Inspector General. A request improperly addressed will only be deemed to have been received as in accordance

with paragraph (i) of this section. Upon receipt of an improperly addressed request, the General Counsel or designee (or Counsel to the Inspector General or designee) shall notify the requester of the date on which the time period began.

(c) A request must reasonably describe the records requested so that employees of the Corporation who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph.

(d) To facilitate the location of records by the Corporation, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Corporation which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a grant, a contract, or a report;

(5) Personnel of the Corporation who may have prepared or have knowledge of the record;

(6) Citations to newspapers or publications which have referred to the record.

(e) The Corporation is not required to create a record or to perform research to satisfy a request.

(f) Estimated fees. The Corporation shall advise the requester of any estimated fees as promptly as possible. The Corporation may require that fees be paid in advance, in accordance with §1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester.

(g) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in §1602.13(f). The Corporation shall respond to such request as promptly as possible.

(h) Format. The Corporation will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(i)(1)(i) The General Counsel or designee, upon request for any records made in accordance with this section, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(ii) In the case of a request for any Office of Inspector General records made in accordance with this section, the Counsel to the Inspector General or designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 days (excepting Saturdays, Sundays and legal public holidays) after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(i)(2)(i) If the General Counsel or designee determines that a request or portion thereof is for the Office of Inspector General records, the General Counsel or designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. If the Counsel to the Inspector General or designee determines that a request or portion thereof is for Corporation records not maintained by the Office of Inspector General, the Counsel to the

Inspector General or designee shall promptly refer the request or portion thereof to the Office of Legal Affairs and send notice of such referral to the requester.

(ii) The 20-day period under paragraph (i)(1) of this section shall commence on the date on which the request is first received by the appropriate Office (the Office of Legal Affairs or the Office of Inspector General), but in no event later than 10 working days after the request has been received by either the Office of Legal Affairs or the Office of Inspector General. The 20-day period shall not be tolled by the Office processing the request except that the processing Office may make one request to the requester for information pursuant to paragraph (c) of this section and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or, if necessary to clarify with the requester issues regarding fee assessment. In either case, the processing Office's receipt of the requester's response to such a request for information or clarification ends the tolling period.

(3) Unusual circumstances. As used in this part, ''unusual circumstances'' are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization, such as a recipient, having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(j) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (i) of this section, the Corporation may ask the requester to narrow the request or agree to an additional delay.

(k) When no determination can be dispatched within the applicable time limit, the General Counsel or designee or the Counsel to the Inspector General or designee shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Corporation's President or Inspector General, in accordance with §1602.12. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with §1602.12. The General Counsel or designee or the Counsel to the Inspector General or designee may ask the requester to forego appeal until a determination is made.

(l) After it has been determined that a request will be granted, the Corporation will act with due diligence in providing a substantive response.

(m)(1) Expedited treatment. Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need. A compelling need means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Corporation or Federal government activity and the request is made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Corporation's or the Federal government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and

received by the Corporation pursuant to paragraphs (b) of this section.

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of its receipt of a request for expedited processing, the General Counsel or designee or the Inspector General or designee shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously by the Corporation.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67793, Nov. 17, 2008]

§ 1602.9 Exemptions for withholding records.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute (other than the exemptions under FOIA at 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding, or refers to particular types of matters to be withheld;

(3) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Records or information compiled for law enforcement purposes including enforcing the Legal Services Corporation Act or any other law, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person or a recipient of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(b) In the event that one or more of the exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The amount of information deleted and the exemption under which the deletion is being made shall be indicated on the released portion of the record, unless doing so would harm the interest protected by the exemption under which the deletion is made. If technically feasible, the amount of information deleted and the exemption under which the deletion is being made shall be indicated at the place in the record where the deletion occurs.

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

(c) No requester shall have a right to insist that any or all of the techniques in paragraph (b) of this section should be employed in order to satisfy a request.

(d) Records that may be exempt from disclosure pursuant to paragraph (a) of this section may be made available at the discretion of the Corporation official authorized to grant or deny the request for records, after appropriate consultation as provided in §1602.10. Records may be made available pursuant to this paragraph when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the Corporation, the public, a recipient, or any person.

[63 FR 41196, Aug. 3, 1998, as amended at 73 FR 67794, Nov. 17, 2008]

§1602.10 Officials authorized to grant or deny requests for records.

(a) The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation.

(b) The General Counsel or designee and the Counsel to the Inspector General or designee are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this part. The General Counsel or designee shall consult with the Office of the Counsel to the Inspector General or designee prior to granting or denying any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or designee shall consult with the Office of the General Counsel prior to granting or denying any request for records or portions of records which originated with any component of the Corporation other than the Office of Inspector General, or which contain information which originated with a component of the Corporation other than the Office of Inspector General, but which are maintained by the Office of Inspector General.

[63 FR 41196, Aug. 3, 1998, as amended at 73 FR 67794, Nov. 17, 2008]

§1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of §1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in §1602.9 (a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under §1602.5(b).

§1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in §1602.5(a) and §1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: ''Freedom of

Information Appeal.'' An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in §1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to §1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under §1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

§1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b)(1) Fees shall be limited to reasonable standard charges for document search, review, and duplication, when records are requested for commercial use;

(2) If no unusual circumstances, as set forth in §1602.8 apply, for requests received on or after December 31, 2008, if LSC has failed to comply with the time limits set forth in that section, otherwise applicable search fees will not be charged to a requester. In such cases, if the requester is a representative of the news media, otherwise applicable duplication fees will not be charged.

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule for charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $16.15

(ii) Band 2: $26.66

(iii) Band 3: $39.15

(iv) Band 4: $51.41

(v) Band 5: $54.59

(vi) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 13 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Express mail: actual charges as incurred.

(f) Fee waivers. A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has

determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the Corporation or Federal government.'' The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to ''public understanding.'' The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of Corporation or Federal government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. LSC shall consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in this part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily'' in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed $25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Corporation.

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

(k) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(l) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(m) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

[63 FR 41196, Aug. 3, 1998, as amended at 68 FR 7437, Feb. 14, 2003; 73 FR 67794, Nov. 17, 2008]

§ 1602.14 Submitter's rights process.

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested grant application(s) (or any portion thereof). The notice shall reasonably describe the grant application(s), or portions thereof, requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's grant application(s) desires to object to the disclosure of the grant application(s) (or any portion thereof), the

submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this Part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested grant application(s), or portions thereof, the requested information should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

[68 FR 7438, Feb. 14, 2003]

PART 1603—STATE ADVISORY COUNCILS

Sec.

1603.1 Purpose.
1603.2 Definitions.
1603.3 Composition and term of office of council membership.
1603.4 Procedure for appointment of council.
1603.5 Council purpose and duties.
1603.6 Duties of Corporation upon receipt of notification of violation.
1603.7 Organization and procedural functioning of council.
1603.8 Corporation support of council.
1603.9 Annual report of council.
1603.10 Multi-state recipients.

AUTHORITY: Sec. 1004(f), 88 Stat. 379–380 (42 U.S.C. 2996c(f)).

SOURCE: 40 FR 59351, Dec. 23, 1975, unless otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) *Act* means the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*;

(b) *Apparent violation* means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) *Board* means the Board of Directors of the Legal Services Corporation;

(d) *Corporation* means the Legal Services Corporation established under the Act;

(e) *Council* means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) *Eligible client* means any person financially unable to afford legal assistance;

(g) *Governor* means the chief executive officer of a State;

(h) *Recipient* means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1) of the Act;

(i) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council, to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment, but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys, be selected after the Governor has consulted with representatives of groups concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.2(b) of this chapter.

(b) In fulfilling the purpose set forth in paragraph (a) of this section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notication.

(c) The Corporation shall inform the Chairperson of a council of the action,

if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, DC, a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in §1603.5(a) of this chapter. The procedures for operation of the council shall include provisions for notifying the appropriate regional director of the Corporation of the time and place of any meeting of the council.

(d) It is recommended that a council meet at the call of the Chairperson thereof, or at the request to the Chairperson of at least four members thereof, at such times as may be necessary to carry out its duties, but at least annually.

§ 1603.8 Corporation support of council.

(a) The Corporation shall inform the Chairperson of each council of the funds available to the council from the Corporation for actual and reasonable expenses incurred by members of the council to pursue council business.

(b) It shall be the duty of the President of the Corporation to keep the Chairperson of each council informed of the work of the Corporation.

(c) The Secretary of the Corporation shall mail annually to each recipient the name and address of the Chairperson of the appropriate council and a form of notice indicating where complaints may be sent. The recipient shall post said name and address of the Chairperson and said notice in plain public view in each office of the recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and on or before March 31 of each succeeding year, a council shall submit to the Corporation a report of the activities of the council during the previous calendar year. The report may contain comments or suggestions regarding how best to provide high quality legal assistance to the poor, and regarding such other matters having to do with provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

PART 1604—OUTSIDE PRACTICE OF LAW

Sec.
1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Permissible outside practice.
1604.5 Compensation.
1604.6 Use of recipient resources.
1604.7 Court appointments.

AUTHORITY: 42 U.S.C. 2996e(b)(3), 2996e(d)(6), 2996f(a)(4), 2996g(e).

SOURCE: 68 FR 67377, Dec. 2, 2003, unless otherwise noted.

§ 1604.1 Purpose.

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

§ 1604.2 Definitions.

As used in this part—

(a) *Full-time attorney* means an attorney who is employed full-time by a recipient in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Outside practice of law* means the provision of legal assistance to a client who is not receiving that legal assistance from the employer of the full-time attorney rendering assistance, but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

§ 1604.3 General policy.

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the LSC Act, this part and applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by the LSC Act and this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

§ 1604.4 Permissible outside practice.

A recipient's written policies may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in §1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

§ 1604.5 Compensation.

(a) Except as provided in paragraph (b) of this section and §1604.7(a), a recipient's written policies shall not permit a full-time attorney to receive any compensation for the outside practice of law.

(b) A recipient's written policies which permit a full-time attorney who meets the criteria set forth in §1604.4(c)(1) to engage in the outside practice of law shall permit full-time attorneys to seek and receive personal compensation for work performed pursuant to that section.

§ 1604.6 Use of recipient resources.

(a) For cases undertaken pursuant to §1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds, are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to §1604.4(c) (2) through (4), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's resources, whether funded with Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

§ 1604.7 Court appointments.

(a) A recipient's written policies may permit a full-time attorney to accept a court appointment if the director of the recipient or the director's designee determines that:

(1) Such an appointment is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters;

(2) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient's written policies may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A recipient's written policies may permit a full-time attorney to identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorneys' work on behalf of the recipient's clients, the recipient's written policies shall treat such legal assistance in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section, provided that the policies may only permit mandatory pro bono activities that are not otherwise prohibited by the LSC Act, applicable appropriations laws, or LSC regulation.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Sec.
1605.1 Purpose.
1605.2 Definition.
1605.3 Review of Appeals.

AUTHORITY: Secs. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

SOURCE: 41 FR 18513, May 5, 1976, unless otherwise noted.

§ 1605.1 Purpose.

This part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

Appeal means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

PART 1606—TERMINATION, LIMITED REDUCTION OF FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.
1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for a termination or a limited reduction of funding.
1606.4 Grounds for debarment.
1606.5 Procedures.
1606.6 Preliminary determination and final decision.
1606.7 Corrective action, informal conference, review of written materials, and final decision.
1606.8 Hearing for a termination or debarment.
1606.9 Recommended decision for a termination or debarment.
1606.10 Final decision for a termination, debarment, or limited reduction of funding.
1606.11 Qualifications on hearing procedures.
1606.12 Time and waiver.

1606.13 Interim and termination funding; reprogramming, implementation.
1606.14 Recompetition.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105–119, Title V, Secs. 501(b) and (c), 502, 503, and 504, 111 Stat. 2440, 2510–12; Pub. L. 104–134, Title V, Sec. 503(f), 110 Stat. 1321, 1321–53.

SOURCE: 78 FR 10093, Feb. 13, 2013, unless otherwise noted.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a limited reduction in funding; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

(d) None of the following actions are subject to the procedures or requirements of this part:

(1) A reduction of funding required by law, including but not limited to a reduction in, or rescission of, the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(2) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(3) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(4) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614.

§ 1606.2 Definitions.

For the purposes of this part:

Corporation, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual acting with a seniority level at, or equivalent to, the level of an office director or higher.

Days shall mean the number of calendar days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of *business days* shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

Debarment means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to any other means, including a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

Funding term means the maximum time period for an award or awards of financial assistance under section 1006(a)(1)(A) of the LSC Act provided by the Corporation to a recipient selected pursuant the competition requirements at 45 CFR part 1634. LSC may award grants or contracts for a period of the entire funding term or for shorter periods that may be renewed or extended up to the funding term.

Knowing and willful means that the recipient had actual knowledge that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action, as the case may be.

Limited reduction of funding means a reduction of funding of less than five percent of a recipient's current level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction of funding will affect only the recipient's current year's funding.

LSC requirements means the same as that term is defined in 45 CFR Part 1618.

Receipt of materials shall mean that the materials were sent to the normal address for physical mail, email, or fax

transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation email or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient or the Corporation is sufficient for the running of applicable time periods. Proof of receipt by the Chair of the governing body is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

Recipient means the same as the term is defined in 45 CFR Part 1600.

Substantial noncompliance means either a substantial violation, as defined in this part, or a substantial failure, as indicated at §1606.3(a) of this part.

Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

Termination means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part in the amount of five percent or greater prior to the expiration of the funding term of a recipient's current grant or contract. A partial termination will affect only the level of funding for the current grant year, unless the Corporation provides otherwise in the final decision.

Violation means a violation by the recipient of the LSC requirements.

§1606.3 Grounds for a termination or a limited reduction of funding.

(a) A grant or contract may be terminated in whole or in part when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to §1606.6(a) of this part; or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act or LSC appropriations, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidelines or instructions issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to §1606.6(a) of this part.

(c) A determination of whether there has been a substantial violation for the purposes of this part, and the magnitude of any termination, in whole or in part, or any limited reduction in funding, shall be based on consideration of the criteria set forth in the definition of ''substantial violation'' in §1606.2 of this part.

§1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, ''good cause'' means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant or contract of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in §1610.2(a) and (b) of this chapter, provided that the violation occurred

within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) Any agreement or arrangement, including, but not limited to, a subgrant, subcontract, or other similar agreement, with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(ii) An agreement for professional services with an independent public accountant or other auditor debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after December 23, 1998.

§ 1606.5 Procedures.

(a) Before any final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a limited reduction of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to §1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion set out in §1606.10(d) of this part.

§ 1606.6 Preliminary determination and final decision.

(a) When the Corporation has made a preliminary determination of one or more of the following, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body: that a recipient's grant or contract should be terminated, that a limited reduction of funding shall be imposed, or that a recipient should be debarred. The notice shall:

(1) State the substantial noncompliance that constitutes the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed amount and proposed effective date for the proposed action;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part;

(5) Inform the recipient of its right to receive interim funding pursuant to §1606.13 of this part;

(6) Specify what, if any, corrective action the recipient can take to avoid the proposed action; and

(7) Summarize prior attempts, if any, for resolution of the substantial noncompliance.

(b) If the recipient does not request review, as provided for in this part, before the relevant time limits have expired, then the Corporation may issue a final decision to the recipient. No further appeal or review will be available under this part.

§ 1606.7 Corrective action, informal conference, review of written materials, and final decision.

(a) If the Corporation proposes a corrective action in the preliminary determination pursuant to §1606.6(a)(6) of this part, then the recipient may accept and implement the corrective action, in lieu of an informal conference or submission of written materials under this section, subject to the following requirements:

(1) Within 10 business days of receipt of the preliminary determination, the recipient may submit a draft compliance agreement to accept the terms of

the proposed corrective action, which must include an implementation plan and timeline;

(2) If the Corporation approves the draft compliance agreement, including any modifications suggested by the recipient or the Corporation, then it shall be memorialized in a final compliance agreement signed by the Corporation and the recipient, which shall stay these proceedings;

(3) If the recipient completes the terms of the written compliance agreement in a time and manner that is satisfactory to the Corporation, then the Corporation shall withdraw the preliminary determination; and

(4) If the Corporation determines at any time that the recipient has not presented an acceptable draft compliance agreement, or has not fulfilled any terms of the final compliance agreement, then the Corporation shall notify the recipient in writing. Within 15 calendar days of that notice, the Corporation shall modify or affirm the preliminary determination as a draft final decision. The draft final decision shall summarize these attempts at resolution. The draft final decision need not engage in a detailed analysis of the failure to resolve the substantial noncompliance.

(b) A recipient may submit written materials in opposition to the preliminary determination, request an informal conference, or both, as follows:

(1) For terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(2) For limited reductions in funding, within 10 business days of receipt of the preliminary determination.

(c) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of the Corporation.

(d) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level equivalent to the level of an office director or higher.

(e) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) If an informal conference is conducted or written materials are submitted in opposition to the proposed determination by the recipient, or both, the Corporation shall consider any written materials and any oral presentation or written materials submitted by the recipient at an informal conference. Based on any of these materials or the informal conference, or both, the Corporation shall modify, withdraw, or affirm the preliminary determination through a draft final decision in writing, which shall be provided to the recipient within the later of 15 calendar days after the conclusion of the informal conference or after the recipient of written materials in opposition to the proposed determination (when no informal conference is requested). Except for decisions to withdraw the preliminary determination, the draft final decision shall include a summary of the issues raised in the informal conference and presented in any written materials. The draft final decision need not engage in a detailed analysis of all issues raised.

(g) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, the Corporation shall notify the recipient that no further appeal or review will be available under this part and may proceed to issue the final decision.

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within the later of: 30 calendar days of its receipt of the

preliminary determination, or 15 calendar days of receipt of the draft final decision issued under §1606.7 of this part, as the case may be.

(b) Within 10 business days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time, and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date, and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action, and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 calendar days after the Corporation receives the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred.

§1606.9 Recommended decision for a termination or debarment.

(a) For termination or debarment hearings under §1606.8 of this part, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision to the recipient and the Corporation, which may:

(1) Terminate financial assistance to the recipient commencing as of a specific date;

(2) Impose a limited reduction of funding commencing as of a specific date;

(3) Continue the recipient's current level of financial assistance under the grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(4) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision for a termination, debarment, or limited reduction of funding.

(a) If neither the Corporation nor the recipient requests review by the President of a draft final decision pursuant to §1606.7 of this part or a recommended decision pursuant to §1606.9, as provided for in this part, within 10 business days after receipt by the recipient, then the Corporation shall issue to the recipient a final decision containing either the draft final decision or the recommended decision, as the case may be. No further appeal or review will be available under this part.

(b) The recipient or the Corporation may seek review by the President of a draft final decision or a recommended decision. A request shall be made in writing within 10 business days after receipt of the draft final decision or recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(d) For an appeal of a draft final decision involving a limited reduction of funding pursuant to §1606.7 of this part (for which there is no right to a hearing under §1606.8 of this part) the President may not review the appeal if the President has had prior involvement in the proceedings under this part. If the President cannot review the appeal, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to §1606.5(b) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the proceedings under this part.

(e) As soon as practicable after receipt of the request for review of a draft final decision or a recommended decision, but not later than 30 calendar days thereafter, the President or designee shall adopt, modify, or reverse the draft final decision or the recommended decision, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to §1606.9 of this part, this decision shall conform to the requirements of §1606.9(b) of this part.

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§1606.6 through 1606.10 of this part shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions in the same hearing.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under §1606.4(b)(1) or (2), the hearing procedures set out in §1606.6 through 1606.10 of this part shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in §1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommended decision shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and

an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommended decision within 10 business days of receipt of the recommended decision, the decision shall become final and the final decision shall be issued by the Corporation to the recipient within 5 business days.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to §1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in §1606.11(d) of this part, any period of time provided in these rules may, upon good cause shown and determined, be extended in writing:

(1) By the Corporation, unless a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued; or

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation or imposing a limited reduction of funding.

§1606.13 Interim and other funding, reprogramming, implementation.

(a) Pending the completion of termination or limited reduction of funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract for financial assistance with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction of funding, the recipient loses all rights to the terminated or reduced funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize closeout or transition funding, or both, if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) The Corporation has sole discretion to determine the manner in which the final decision is implemented. The Corporation's discretion includes, but is not limited to the decision to prorate the amount of funds reduced over the remaining disbursements in the funding term or deduct the sum in a single disbursement, or any other method the Corporation deems appropriate.

(e) Funds recovered by the Corporation pursuant to a termination or limited reduction of funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

§1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to §1634.11 of this part.

PART 1607—GOVERNING BODIES

Sec.
1607.1 Purpose.
1607.2 Definitions.
1607.3 Composition.
1607.4 Functions of a governing body.
1607.5 Compensation.
1607.6 Waiver.

AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103–317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

§ 1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority to govern the activities of a recipient receiving funds under §1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under §1006(a)(1)(A) of the Act.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The

members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other similar factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other similar factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association, group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with the recipient's bylaws and applicable State law.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) Recipients may recommend candidates for governing body membership to the appropriate bar associations and other appointing groups and should consult with the appointing organizations to insure that:

(1) Appointees meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible clients, bar admittance requirements for attorney board members, and the general requirements that all members be supportive of the purposes of the Act and have an interest in and knowledge of the delivery of legal services to the poor;

(2) The particular categories of board membership and the board as a whole meet the diversity requirements described in §§1607.3(b)(3), 1607.3(c) and 1607.3(d);

(3) Appointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

§1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session in accordance with written policies adopted by the recipient's governing body.

(b) In addition to other powers and responsibilities that may be provided for by State law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation notice of any changes in such bylaws within a reasonable time after the change is made.

§1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other

reasonable out-of-pocket expenses in accordance with written policies adopted by the recipient.

(b) Pursuant to a waiver granted under §1607.6(b)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area:

(1) To accept referrals of fee-generating cases under part 1609 of these regulations;

(2) To participate in any uncompensated private attorney involvement activities supported by the recipient;

(3) To seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to §§1607.5 (c) (1) and (2); and

(4) To receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to §1607.5(c)(2).

[59 FR 65254, Dec. 19, 1994, as amended at 60 FR 2330, Jan. 9, 1995]

§1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under §222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive any of the requirements of this part which are not mandated by applicable law if a recipient demonstrates that it cannot comply with them because of: (1) The nature of the population, legal community or area served; or (2) Special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(c) A recipient seeking a waiver under §1607.6(b)(1) shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(d) As a condition of granting a waiver under §1607.6(b)(2) of any of the requirements imposed upon governing bodies by §1607.3, the president shall require that a recipient have a policy body with a membership composed and appointed in the manner prescribed by §1607.3. Such policy body shall be subject to the meeting requirements of §1607.4(a) and its attorney members shall be subject to the restrictions on compensation contained in §1607.5. The policy body shall have such specific powers and responsibilities as the President determines are necessary to enable it to formulate and enforce policy with respect to the services provided under the recipient's LSC grant or contract.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.

1608.1 Purpose.
1608.2 Definition.
1608.3 Prohibitions applicable to the Corporation and to recipients.
1608.4 Prohibitions applicable to all employees.
1608.5 Prohibitions applicable to Corporation employees and staff attorneys.
1608.6 Prohibitions applicable to attorneys and to staff attorneys.
1608.7 Attorney-client relationship.
1608.8 Enforcement.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1006(b)(3), 1006(b)(5)(B), 1006(d)(3), 1006 (d)(4), 1006(e)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

SOURCE: 43 FR 32773, July 28, 1978, unless otherwise noted.

§1608.1 Purpose.

This part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 Definition.

Legal assistance activities, as used in this part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1608.3 Prohibitions applicable to the Corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisian or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under §1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to Corporation employees and to staff attorneys.

While employed under the act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan of nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(c) Be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

While engaged in legal assistance activities supported under the act, no attorney shall engage in

(a) Any political activity,

(b) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(c) Any voter registration activity.

§ 1608.7 Attorney-client relationship.

Nothing in this part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This part shall be enforced according to the procedures set forth in §1612.5.

PART 1609—FEE-GENERATING CASES

Sec.

1609.1 Purpose.
1609.2 Definition.
1609.3 General requirements.
1609.4 Accounting for and use of attorneys' fees.
1609.5 Acceptance of reimbursement from a client.
1609.6 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

SOURCE: 62 FR 19399, Apr. 21, 1997, unless otherwise noted.

§ 1609.1 Purpose.

This part is designed:

(a) To ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and

(b) To assist eligible clients to obtain appropriate and effective legal assistance.

§ 1609.2 Definition.

(a) *Fee-generating case* means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.

(b) *Fee-generating case* does not include a case where:

(1) A court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or

(2) A recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not use Corporation funds to provide legal assistance in a fee-generating case unless:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

[62 FR 19399, Apr. 21, 1997, as amended at 75 FR 6818, Feb. 11, 2010; 76 FR 23504, Apr. 27, 2011]

§ 1609.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

[75 FR 6818, Feb. 11, 2010]

§ 1609.5 Acceptance of reimbursement from a client.

(a) When a case results in recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

[75 FR 6818, Feb. 11, 2010]

§ 1609.6 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19399, Apr. 21, 1997. Redesignated at 75 FR 6818, Feb. 11, 2010]

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

Sec.
1610.1 Purpose.
1610.2 Definitions.
1610.3 Prohibition.
1610.4 Authorized use of non-LSC funds.
1610.5 Notification.
1610.6 Applicability.
1610.7 Transfers of LSC funds.
1610.8 Program integrity of recipient.
1610.9 Accounting.

AUTHORITY: 42 U.S.C. 2996i; Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321; Pub. L. 111–117; 123 Stat. 3034.

SOURCE: 62 FR 27698, May 21, 1997, unless otherwise noted.

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any restricted activities and that recipients maintain objective integrity and independence from organizations that engage in restricted activities.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a) (2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Client identification and statement of facts);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(14) (Abortion litigation);

(10) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(11) Section 504(a)(16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

(12) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(13) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a payment of LSC funds by a recipient to a person or entity for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. *Transfer* does not include any payment of LSC funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

[62 FR 27698, May 21, 1997, as amended at 75 FR 6818, Feb. 11, 2010]

§ 1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

§ 1610.4 Authorized use of non-LSC funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than $250.

§ 1610.6 Applicability.

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

§ 1610.7 Transfers of LSC funds.

(a) If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in this part, except as modified by paragraphs (b) and (c) of this section, will apply both to the LSC funds transferred and to the non-LSC funds of the

person or entity to whom those funds are transferred.

(b)(1) In regard to the requirement in §1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC funds shall either:

(i) Use the funds transferred consistent with the recipient's priorities; or

(ii) Establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in §1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(c) For a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

§1610.8 Program integrity of recipient.

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to the Corporation within 180 days of the effective date of this part that the recipient is in compliance with the requirements of this section. Thereafter, the recipient's governing body must certify such compliance to the Corporation on an annual basis.

§1610.9 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

PART 1611—FINANCIAL ELIGIBILITY

Sec.

1611.1 Purpose.
1611.2 Definitions.
1611.3 Financial eligibility policies.
1611.4 Financial eligibility for legal assistance.
1611.5 Authorized exceptions to the recipient's annual income ceiling.
1611.6 Representation of groups.
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1611.8 Changes in financial eligibility status.
1611.9 Retainer agreements.
APPENDIX A TO PART 1611—INCOME LEVEL FOR INDIVIDUALS ELIGIBLE FOR ASSISTANCE

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996e(b)(3), 2996f(a)(1), 2996f(a)(2), 2996g(e); Sec. 509(h), Pub. L. 104–134, 110 Stat. 1321; Pub. L. 105–119, 11 Stat. 2512.

SOURCE: 70 FR 45562, Aug. 8, 2005, unless otherwise noted.

§1611.1 Purpose.

This part sets forth requirements relating to the financial eligibility of individual applicants for legal assistance supported with LSC funds and recipients' responsibilities in making financial eligibility determinations. This part is not intended to and does not create any entitlement to service for persons deemed financially eligible.

This part also seeks to ensure that financial eligibility is determined in a manner conducive to development of an effective attorney-client relationship. In addition, this part sets forth standards relating to the eligibility of groups for legal assistance supported with LSC funds. Finally, this part sets forth requirements relating to recipients' responsibilities in executing retainer agreements with clients.

§ 1611.2 Definitions.

(a) ''Advice and counsel'' means legal assistance that is limited to the review of information relevant to the client's legal problem(s) and counseling the client on the relevant law and/or suggested course of action. Advice and counsel does not encompass drafting of documents or making third-party contacts on behalf of the client.

(b) ''Applicable rules of professional responsibility'' means the rules of ethics and professional responsibility generally applicable to attorneys in the jurisdiction where the recipient provides legal services.

(c) ''Applicant'' means an individual who is seeking legal assistance supported with LSC funds from a recipient. The term does not include a group, corporation or association.

(d) ''Assets'' means cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

(e) ''Brief services'' means legal assistance in which the recipient undertakes to provide a discrete and time-limited service to a client beyond advice and consultation, including but not limited to activities, such as the drafting of documents or making limited third party contacts on behalf of a client.

(f) ''Extended service'' means legal assistance characterized by the performance of multiple tasks incident to continuous representation. Examples of extended service would include representation of a client in litigation, an administrative adjudicative proceeding, alternative dispute resolution proceeding, extended negotiations with a third party, or other legal representation in which the recipient undertakes responsibility for protecting or advancing a client's interest beyond advice and counsel or brief services.

(g) ''Governmental program for low income individuals or families'' means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

(h) ''Governmental program for persons with disabilities'' means any Federal, State or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of mental and/or physical disability.

(i) ''Income'' means actual current annual total cash receipts before taxes of all persons who are resident members and contribute to the support of an applicant's household, as that term is defined by the recipient. Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker's compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. Total cash receipts do not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to $2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

§ 1611.3 Financial eligibility policies.

(a) The governing body of a recipient shall adopt policies consistent with this part for determining the financial eligibility of applicants and groups.

The governing body shall review its financial eligibility policies at least once every three years and make adjustments as necessary. The recipient shall implement procedures consistent with its policies.

(b) As part of its financial eligibility policies, every recipient shall specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds.

(c)(1) As part of its financial eligibility policies, every recipient shall establish annual income ceilings for individuals and households, which may not exceed one hundred and twenty five percent (125%) of the current official Federal Poverty Guidelines amounts. The Corporation shall annually calculate 125% of the Federal Poverty Guidelines amounts and publish such calculations in the FEDERAL REGISTER as a revision to Appendix A to this part.

(2) As part of its financial eligibility policies, a recipient may adopt authorized exceptions to its annual income ceilings consistent with §1611.5.

(d)(1) As part of its financial eligibility policies, every recipient shall establish reasonable asset ceilings for individuals and households. In establishing asset ceilings, the recipient may exclude consideration of a household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

(2) The recipient's policies may provide authority for waiver of its asset ceilings for specific applicants under unusual circumstances and when approved by the recipient's Executive Director, or his/her designee. When the asset ceiling is waived, the recipient shall record the reasons for such waiver and shall keep such records as are necessary to inform the Corporation of the reasons for such waiver.

(e) Notwithstanding any other provision of this part, or other provision of the recipient's financial eligibility policies, every recipient shall specify as part of its financial eligibility policies that in assessing the income or assets of an applicant who is a victim of domestic violence, the recipient shall consider only the assets and income of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence, jointly held by the applicant with the alleged perpetrator of the domestic violence, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

(f) As part of its financial eligibility policies, a recipient may adopt policies that permit financial eligibility to be established by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families consistent with §1611.4(c).

(g) Before establishing its financial eligibility policies, a recipient shall consider the cost of living in the service area or locality and other relevant factors, including but not limited to:

(1) The number of clients who can be served by the resources of the recipient;

(2) The population that would be eligible at and below alternative income and asset ceilings; and

(3) The availability and cost of legal services provided by the private bar and other free or low cost legal services providers in the area.

§1611.4 Financial eligibility for legal assistance.

(a) A recipient may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. Nothing in this part, however, prohibits a recipient from providing legal assistance to an individual without regard to that individual's income and assets if the legal assistance is wholly supported by funds from a source other than LSC, and is otherwise permissible under applicable law and regulation.

(b) Consistent with the recipient's financial eligibility policies and this part, the recipient may determine an applicant to be financially eligible for

legal assistance if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to §1611.3(d)(1), or the applicable asset ceiling has been waived pursuant §1611.3(d)(2), and:

(1) The applicant's income is at or below the recipient's applicable annual income ceiling; or

(2) The applicant's income exceeds the recipient's applicable annual income ceiling but one or more of the authorized exceptions to the annual income ceilings, as provided in §1611.5, applies.

(c) Consistent with the recipient's policies, a recipient may determine an applicant to be financially eligible without making an independent determination of income or assets, if the applicant's income is derived solely from a governmental program for low-income individuals or families, provided that the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test.

§1611.5 Authorized exceptions to the annual income ceiling.

(a) Consistent with the recipient's policies and this part, a recipient may determine an applicant whose income exceeds the recipient's applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed the recipient's applicable asset ceiling established pursuant to §1611.3(d), or the asset ceiling has been waived pursuant to §1611.3(d)(2), and:

(1) The applicant is seeking legal assistance to maintain benefits provided by a governmental program for low income individuals or families; or

(2) The Executive Director of the recipient, or his/her designee, has determined on the basis of documentation received by the recipient, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service; or

(3) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and:

(i) The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or

(ii) The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or

(4) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and the recipient has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:

(i) Current income prospects, taking into account seasonal variations in income;

(ii) Unreimbursed medical expenses and medical insurance premiums;

(iii) Fixed debts and obligations;

(iv) Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;

(v) Non-medical expenses associated with age or disability;

(vi) Current taxes; or

(vii) Other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance.

(b) In the event that a recipient determines that an applicant is financially eligible pursuant to this section and is provided legal assistance, the recipient shall document the basis for the financial eligibility determination. The recipient shall keep such records as may be necessary to inform the Corporation of the specific facts and factors relied on to make such determination.

§1611.6 Representation of groups.

(a) A recipient may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:

(1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

(2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

(b)(1) In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either:

(i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

(ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

(2) A recipient shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

(c) The eligibility requirements set forth herein apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by a recipient, regardless of the source of funds supporting the assistance, must be otherwise permissible under applicable law and regulation.

§ 1611.7 Manner of determining financial eligibility.

(a)(1) In making financial eligibility determinations regarding individual applicants, a recipient shall make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. The recipient shall record income and asset information in the manner specified in this section.

(2) In making financial eligibility determinations regarding groups seeking LSC-supported legal assistance, a recipient shall follow the requirements set forth in § 1611.6(b) of this part.

(b) A recipient shall adopt simple intake forms and procedures to obtain information from applicants and groups to determine financial eligibility in a manner that promotes the development of trust between attorney and client. The forms shall be preserved by the recipient.

(c) If there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant or group, a recipient shall make appropriate inquiry to verify the information, in a manner consistent with the attorney-client relationship.

(d) When one recipient has determined that a client is financially eligible for service in a particular case or matter, that recipient may request another recipient to extend legal assistance or undertake representation on behalf of that client in the same case or matter in reliance upon the initial financial eligibility determination. In such cases, the receiving recipient is not required to review or redetermine the client's financial eligibility unless there is a change in financial eligibility status as described in § 1611.8 or there is substantial reason to doubt the validity of the original determination, provided that the referring recipient provides and the receiving recipient retains a copy of the intake form documenting the financial eligibility of the client.

§ 1611.8 Change in financial eligibility status.

(a) If, after making a determination of financial eligibility and accepting a client for service, the recipient becomes aware that a client has become financially ineligible through a change

in circumstances, a recipient shall discontinue representation supported with LSC funds if the change in circumstances is sufficient, and is likely to continue, to enable the client to afford private legal assistance, and discontinuation is not inconsistent with applicable rules of professional responsibility.

(b) If, after making a determination of financial eligibility and accepting a client for service, the recipient later determines that the client is financially ineligible on the basis of later discovered or disclosed information, a recipient shall discontinue representation supported with LSC funds if the discontinuation is not inconsistent with applicable rules of professional responsibility.

§ 1611.9 Retainer agreements.

(a) When a recipient provides extended service to a client, the recipient shall execute a written retainer agreement with the client. The retainer agreement shall be executed when representation commences or as soon thereafter as is practicable. Such retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal problem for which representation is sought, and the nature of the legal services to be provided.

(b) No written retainer agreement is required for advice and counsel or brief service provided by the recipient to the client or for legal services provided to the client by a private attorney pursuant to 45 CFR part 1614.

(c) The recipient shall maintain copies of all retainer agreements generated in accordance with this section.

APPENDIX A TO PART 1611— INCOME LEVEL FOR INDIVIDUALS ELIGIBLE FOR ASSISTANCE

LEGAL SERVICES CORPORATION 2016 INCOME GUIDELINES *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$14,850	$18,550	$17,088
2	20,025	25,025	23,038
3	25,200	31,500	28,988
4	30,375	37,975	34,938
5	35,550	44,450	40,888
6	40,725	50,925	46,838
7	45,913	57,400	52,788
8	51,113	63,900	58,763
For each additional member of the household in excess of 8, add	5,200	6,500	5,975

*The figures in this table represent 125% of the poverty guidelines by household size as determined by HHS.

REFERENCE CHART—200% OF FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	$23,760	$29,680	$27,340
2	32,040	40,040	36,860
3	40,320	50,400	46,380
4	48,600	60,760	55,900
5	56,880	71,120	65,420
6	65,160	81,480	74,940
7	73,460	91,840	84,460
8	81,780	102,240	94,020
For each additional member of the household in excess of 8, add	8,320	10,400	9,560

[81 FR 6183, Feb. 5, 2016]

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.
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1612.2 Definitions.
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1612.8 Training.
1612.9 Organizing.
1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.
1612.11 Recipient policies and procedures.

AUTHORITY: Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321, secs. 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e); 42 U.S.C. 2996e(b)(5), 2996f(a) (5) and (6), 2996f(b) (4), (6) and (7), and 2996g(e).

SOURCE: 62 FR 19404, Apr. 21, 1997, unless otherwise noted.

§ 1612.1 Purpose.

The purpose of this part is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

§ 1612.2 Definitions.

(a)(1) *Grassroots lobbying* means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) *Grassroots lobbying* does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b)(1) *Legislation* means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive.

(2) *Legislation* does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) *Public policy* means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d)(1) *Rulemaking* means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and ''notice and comment'' rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and

(ii) Adjudicatory proceedings that are formal adversarial proceedings to

formulate or modify an agency policy of general applicability and future effect.

(2) *Rulemaking* does not include:

(i) Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses;

(ii) Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) *Public rulemaking* means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the FEDERAL REGISTER or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) *Similar procedure* refers to a legislative process by which matters must be determined by a vote of the electorate.

[62 FR 19404, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

§ 1612.3 Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence:

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4 Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying.

§ 1612.5 Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this part is intended to prohibit a recipient from:

(1) Applying for a governmental grant or contract;

(2) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(3) Informing clients, other recipients, or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations;

(4) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(5) Permitting its employees to participate in bar association activities, provided that recipient resources are not used to support and the recipient is

not identified with activities of bar associations that are devoted to activities prohibited by this part.

(6) Advising a client of the client's right to communicate directly with an elected official; or

(7) Participating in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6 Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; or

(3) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561, *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange for a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7 Public demonstrations and activities.

(a) During working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation or by private entities, no person shall:

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from:

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8 Training.

(a) A recipient may not support or conduct training programs that:

(1) Advocate particular public policies;

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking;

(3) Disseminate information about such policies or activities; or

(4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them:

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

§ 1612.9 Organizing.

(a) Recipients may not use funds provided by the Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with such supporting documentation as specified by the Corporation.

[62 FR 19404, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

§ 1612.11 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

Sec.

1613.1 Purpose.
1613.2 Definition.
1613.3 Prohibition.
1613.4 Authorized representation.
1613.5 Criminal representation in Indian tribal courts.

AUTHORITY: Sec. 234(d), Public Law 111–211, 124. Stat. 2282; 42 U.S.C. 2996f(b)(2); 42 U.S.C. 2996g(e).

SOURCE: 43 FR 32775, July 28, 1978, unless otherwise noted.

§ 1613.1 Purpose.

This part is designed to ensure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is authorized by this part.

[79 FR 21150, Apr. 15, 2014]

§ 1613.2 Definition.

Criminal proceeding means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated ''criminal'' by applicable law and punishable by death, imprisonment, or a jail sentence.

[79 FR 21150, Apr. 15, 2014]

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

(b) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

[43 FR 32775, July 28, 1978, as amended at 79 FR 21150, Apr. 15, 2014]

§ 1613.5 Criminal representation in Indian tribal courts.

(a) Legal assistance may be provided with Corporation funds to a person charged with a criminal offense in an Indian tribal court who is otherwise eligible.

(b) Legal assistance may be provided in a criminal proceeding in an Indian tribal court pursuant to a court appointment only if the appointment is made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, and is authorized by the recipient after a determination that acceptance of the appointment would not impair the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters.

[79 FR 21151, Apr. 15, 2014]

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.
1614.1 Purpose.
1614.2 General policy.
1614.3 Definitions.
1614.4 Range of activities.
1614.5 Compensation of recipient staff and private attorneys; blackout period.
1614.6 Procedure.
1614.7 Fiscal recordkeeping.
1614.8 Prohibition of revolving litigation funds.
1614.9 Waivers.
1614.10 Failure to comply.

AUTHORITY: 42 U.S.C. 2996g(e).

SOURCE: 79 FR 61781, Oct. 15, 2014, unless otherwise noted.

§ 1614.1 Purpose.

Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program, and consistent with LSC's governing statutes and regulations, in a manner that furthers the statutory requirement of providing high quality, economical, and effective client-centered legal assistance and legal information to eligible clients. This part is designed to ensure that recipients of LSC funds involve private attorneys, and encourages recipients to involve law students, law graduates, or other professionals, in the delivery of legal information and legal assistance to eligible clients.

§ 1614.2 General policy.

(a) A recipient of LSC funding shall devote an amount equal to at least twelve and one-half percent (12.5%) of the recipient's annualized Basic Field-General award to the involvement of private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients. This requirement is hereinafter referred to as the ''PAI requirement.''

(b) Basic Field-Native American grants, Basic Field-Migrant grants, and non-Basic Field grants are not subject to the PAI requirement. For example, Technology Initiative Grants are not subject to the PAI requirement. However, recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of legal information and legal assistance by private attorneys, law students, law graduates, or other professionals in a manner that is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the Corporation that such involvement is not feasible.

§ 1614.3 Definitions.

(a) *Attorney* means a person who is authorized to practice law in the jurisdiction in which assistance is rendered. For purposes of this part, *attorney* does

not have the meaning stated in 45 CFR 1600.1.

(b) *Incubator project* means a program that provides legal training and support, for a limited period of time, to law students, law graduates, or attorneys who are establishing, or upon graduation and bar admission intend to establish, their own independent law practices.

(c) *Law graduate* means an individual who, within the last two years, has completed the education and/or training requirements necessary for application to the bar in any U.S. state or territory.

(d) *Law student* means an individual who is, or has been, enrolled, full-time or part-time, within the past year, and not expelled from:

(1) A law school that can provide the student with a degree that is a qualification for application to the bar in any U.S. state or territory; or

(2) An apprenticeship program that can provide the student with sufficient qualifications for application to the bar in any U.S. state or territory.

(e) *Legal assistance* means service on behalf of a client or clients that is specific to the client's or clients' unique circumstances, involves a legal analysis that is tailored to the client's or clients' factual situation, and involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.

(f) *Legal information* means substantive legal information not tailored to address a person's specific problem and that does not involve applying legal judgment or recommending a specific course of action.

(g) *Other professional* means an individual, not engaged in the practice of law and not employed by the recipient, providing services in furtherance of the recipient's provision of legal information or legal assistance to eligible clients. For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of *other professional*. An individual granted a limited license to practice law by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of *other professional*.

(h) *PAI Clinic* means an activity under this part in which private attorneys, law students, law graduates, or other professionals are involved in providing legal information and/or legal assistance to the public at a specified time and location.

(i) *Private attorney* means an attorney. *Private attorney* does not include:

(1) An attorney employed half time or more per calendar year by an LSC recipient or subrecipient; or

(2) An attorney employed less than half time by an LSC recipient or subrecipient acting within the terms of his or her employment by the LSC recipient or subrecipient; or

(3) An attorney acting within the terms of his or her employment by a non-profit organization whose primary purpose is the delivery of free civil legal services to low-income individuals; or

(4) An attorney acting within the terms of his or her employment by a component of a non-profit organization, where the component's primary purpose is the delivery of free civil legal services to low-income individuals.

(j) *Screen for eligibility* means to screen individuals for eligibility using the same criteria recipients use to determine an individual's eligibility for cases accepted by the recipient and whether LSC funds or non-LSC funds can be used to provide legal assistance (e.g., income and assets, citizenship, eligible alien status, within priorities, applicability of LSC restrictions).

(k) *Subrecipient* has the meaning stated in 45 CFR 1627.2(b)(1), except that as used in this part, such term shall not include entities that meet the definition of *subrecipient* solely because they receive more than $25,000 from an LSC recipient for services provided through a fee-for-service arrangement, such as services provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis.

§ 1614.4 Range of activities.

(a) *Direct delivery of legal assistance to recipient clients.* (1) Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to eligible clients by private attorneys through programs such as organized pro bono plans, reduced fee plans, judicare panels, private attorney contracts, or those modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorney's fees through ''revolving litigation fund'' systems, as described in §1614.8, shall neither be used nor funded under this part nor funded with any LSC support.

(2) In addition to the activities described in paragraph (a)(1) of this section, direct delivery of legal assistance to eligible clients may include representation by a non-attorney in an administrative tribunal that permits non-attorneys to represent individuals before the tribunal.

(3) Systems designed to provide direct legal assistance to eligible clients of the recipient by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components:

(i) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(ii) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(iii) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(iv) Access by private attorneys to LSC recipient resources that provide back-up on substantive and procedural issues of the law.

(b) *Support and other activities.* Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to:

(1) Support provided by private attorneys to the recipient or a subrecipient as part of its delivery of legal assistance or legal information to eligible clients on either a reduced fee or pro bono basis such as the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of the private attorney's facilities, libraries, computer-assisted legal research systems or other resources;

(2) Support provided by other professionals in their areas of professional expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients on either a reduced fee or pro bono basis such as the provision of intake support, research, training, technical assistance, or direct assistance to an eligible client of the recipient; and

(3) Support provided by the recipient in furtherance of activities undertaken pursuant to this section including the provision of training, technical assistance, research, advice and counsel or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(4) Support provided to bar associations or courts establishing legal clinics. A recipient may allocate to its PAI requirement costs associated with providing a bar association or court with technical assistance in planning and establishing a legal clinic at which private attorneys will provide legal information and/or legal assistance.

(5) *PAI Clinics*—(i) *Legal information provided in PAI clinics.* A recipient may allocate to its PAI requirement costs associated with providing support to clinics, regardless of whether the clinic screens for eligibility, if the clinic provides only legal information.

(ii) *Legal assistance provided in PAI clinics.* A recipient may provide support to a PAI clinic that provides legal assistance if the PAI clinic screens for eligibility.

(A) A recipient may allocate to its PAI requirement costs associated with its support of such clinics for legal assistance provided to individuals who are eligible to receive LSC-funded legal services.

(B) Where a recipient supports a clinic that provides legal assistance to individuals who are eligible for permissible non-LSC-funded services, the recipient may not allocate to its PAI requirement costs associated with the legal assistance provided to such individuals. For example, a recipient may not allocate to its PAI requirement costs associated with legal assistance provided through a clinic to an individual who exceeds the income and asset tests for LSC eligibility, but is otherwise eligible.

(C) For clinics providing legal information to the public and legal assistance to clients screened for eligibility, a recipient may allocate to its PAI requirement costs associated with its support of both parts of the clinic. If the clinic does not screen for eligibility, the recipient may allocate to the PAI requirement costs associated with the legal information portion of the PAI clinic, but may not allocate to the PAI requirement costs associated with the legal assistance portion of the clinic.

(D) In order to allocate to its PAI requirement costs associated with support of the legal assistance portion of a clinic, a recipient must maintain records sufficient to document that such clinic has an eligibility screening process and that each individual provided with legal assistance in the portion of the clinic supported by the recipient was properly screened for eligibility under the process.

(6) *Screening and referral systems.* (i) A recipient may participate in a referral system in which the recipient conducts intake screening and refers LSC-eligible applicants to programs that assign applicants to private attorneys on a pro bono or reduced fee basis.

(ii) In order to allocate to its PAI requirement costs associated with participating in such referral systems, a recipient must be able to report the number of eligible persons referred by the recipient to each program and the number of eligible persons who were placed with a private attorney through the program receiving the referral.

(7) *Law student activities.* A recipient may allocate to its PAI requirement costs associated with law student work supporting the recipient's provision of legal information or delivery of legal assistance to eligible clients. Compensation paid by the recipient to law students may not be allocated to the PAI requirement.

(c) *Determination of PAI activities.* The specific methods to be undertaken by a recipient to involve private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to part 1620 of this chapter;

(2) The effective and economic delivery of legal assistance and legal information to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys, law students, law graduates, or other professionals and individual eligible clients; and

(5) The substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys and other professionals.

(d) *Unauthorized practice of law.* This part is not intended to permit any activities that would conflict with the rules governing the unauthorized practice of law in the recipient's jurisdiction.

§ 1614.5 Compensation of recipient staff and private attorneys; blackout period.

(a) A recipient may allocate to its PAI requirement costs associated with compensation paid to its employees only for facilitating the involvement of private attorneys, law students, law graduates, or other professionals in activities under this part.

(b) A recipient may not allocate to its PAI requirement costs associated with compensation paid to a private attorney, law graduate, or other professional for services under this part for any hours an individual provides above 800 hours per calendar year.

(c) No costs may be allocated to the PAI requirement for direct payment to any individual who for any portion of the current year or the previous year

was employed more than 1,000 hours per calendar year by an LSC recipient or subrecipient, except for employment as a law student; provided, however:

(1) This paragraph (c) shall not be construed to prohibit the allocation of costs to the PAI requirement for payments made to such an individual participating in a pro bono or judicare project on the same terms that are available to other attorneys;

(2) This paragraph (c) shall not apply to the allocation of costs to the PAI requirement for payments to attorneys who were employed for less than a year by an LSC recipient or subrecipient as part of an incubator project; and

(3) This paragraph (c) shall not be construed to restrict recipients from allocating to their PAI requirement the payment of funds as a result of work performed by an attorney or other individual who practices in the same business with such former employee.

§ 1614.6 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and 45 CFR part 1620 adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys, law students, law graduates, or other professionals to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys, law students, law graduates, or other professionals in the provision of legal information and legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

(c) In the case of recipients whose service areas are adjacent, coterminous, or overlapping, the recipients may enter into joint efforts to involve private attorneys, law students, law graduates, or other professionals in the delivery of legal information and legal assistance to eligible clients, subject to the prior approval of LSC. In order to be approved, the joint venture plan must meet the following conditions:

(1) The recipients involved in the joint venture must plan to expend at least twelve and one-half percent (12.5%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, twelve and one-half percent (12.5%) of each recipient's grant shall be expended to PAI; provided, however, that such expenditure is subject to waiver under this section;

(2) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(3) The joint PAI venture must provide an opportunity for involving private attorneys, law students, law graduates, or other professionals throughout the entire joint service area(s).

§ 1614.7 Fiscal recordkeeping.

The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and shall have the following characteristics:

(a) They shall accurately identify and account for:

(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(2) Payments to private attorneys, law graduates, or other professionals for support or direct client services rendered. The recipient shall maintain contracts on file that set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys, law graduates, or other professionals shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(3) Contractual payments or subgrants to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts or subgrants concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit Guide for Recipients and Auditors and the Accounting Guide for LSC Recipients and 45 CFR parts 1610, 1627 and 1630;

(4) Other such actual costs as may be incurred by the recipient in this regard.

(b) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(c) Attorneys, law students, law graduates, or other professionals may be reimbursed for actual costs and expenses.

(d) Fees paid to individuals for providing services under this part may not exceed 50% of the local prevailing market rate for that type of service.

§ 1614.8 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which a recipient systematically encourages the acceptance of fee-generating cases as defined in §1609.2 of this chapter by advancing funds to private attorneys, law students, law graduates, or other professionals to enable them to pay costs, expenses, or attorneys' fees for representing clients.

(b) No funds received from the Corporation shall be used to establish or maintain revolving litigation fund systems.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys, law students, law graduates, or other professionals for costs and expenses, provided:

(1) The private attorney, law student, law graduate, or other professional is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under LSC's governing statutes and regulations; and

(2) The private attorney, law student, law graduate, or other professional has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

(d) Nothing in this section shall prevent a recipient from recovering from a private attorney, law student, law graduate, or other professional the

amount advanced for any costs, expenses, or fees from an award to the attorney for representing an eligible client.

§ 1614.9 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) Because of the unavailability of qualified private attorneys, law students, law graduates, or other professionals an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys, law students, law graduates, or other professionals in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by LSC when the recipient shows to the satisfaction of LSC that:

(1) The population of qualified private attorneys, law students, law graduates, or other professionals available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys, law students, law graduates, or other professionals are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts—including, but not limited to, communicating its problems expending the required amount to LSC and requesting and availing itself of assistance and/or advice from LSC regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose current encumbrances and projected expenditures for the current fiscal year would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12.5%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12.5%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full twelve and one-half percent (12.5%) of Corporation funds on PAI activities, provided that the recipient has handled and expects to continue to handle at least twelve and one-half percent (12.5%) of cases brought on behalf of eligible clients through its PAI program(s).

(d)(1) A waiver of special accounting and bookkeeping requirements of this part may be granted by LSC, if the recipient shows to the satisfaction of LSC that such waiver will advance the purpose of this part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by LSC; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial,

that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to LSC. The Corporation shall make a written response to each such request postmarked not later than thirty (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.10 Failure to comply.

(a)(1) If a recipient fails to comply with the expenditure required by this part *and* that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's grant payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12.5%) of the recipient's basic field award.

(2) If the Corporation determines that a recipient failed without good cause to seek a waiver, the Corporation shall give the recipient written notice of that determination. The written notice shall state the determination, the amount to be withheld, and the process by which the recipient may appeal the determination.

(3) The appeal process will follow the procedures for the appeal of disallowed costs set forth at 45 CFR 1630.7(c)–(g), except that:

(i) The subject matter of the appeal shall be limited to the Corporation's determination that the recipient failed without good cause to seek a waiver; and

(ii) Withholding of funds shall be the method for the Corporation to recover the amount to be withheld.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c)(1) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services through PAI programs. When such funds are available for competition, LSC shall publish notice of the requirements concerning time, format, and content of the application and the procedures for submitting an application for such funds. Disbursement of these funds for PAI activities shall be made through a competitive solicitation and awarded on the basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people. Competition for these funds may be held in the recipient's service area, or if the recipient from which funds are withheld is the only LSC recipient applying for the funds in the competitive solicitation, in additional service areas.

(2) Recipients shall expend funds awarded through the competitive process in paragraph (c)(1) of this section in addition to twelve and one-half percent (12.5%) of their Basic Field-General awards.

(d) The withholding of funds under this section shall not be construed as any action under 45 CFR parts 1606, 1618, 1623, or 1630.

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

Sec.
1615.1 Purpose.
1615.2 Prohibition.

1615.3 Application of this part.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

SOURCE: 41 FR 38508, Sept. 10, 1976, unless otherwise noted.

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

PART 1616—ATTORNEY HIRING

Sec.
1616.1 Purpose.
1616.2 Definition.
1616.3 Qualifications.
1616.4 Recommendations.
1616.5 Preference to local applicants.
1616.6 Equal employment opportunity.
1616.7 Language ability.

AUTHORITY: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996e(b)(4)).

SOURCE: 41 FR 38509, Sept. 10, 1976, unless otherwise noted.

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

Community, as used in this part, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and

(f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations, deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

PART 1617—CLASS ACTIONS

Sec.
1617.1 Purpose.
1617.2 Definitions.
1617.3 Prohibition.
1617.4 Recipient policies and procedures.

AUTHORITY: 29 U.S.C. 2996e(d)(5); 110 Stat. 3009 (1996); 110 Stat. 1321 (1996).

SOURCE: 61 FR 63755, Dec. 2, 1996, unless otherwise noted.

§ 1617.1 Purpose.

This rule is intended to ensure that LSC recipients do not initiate or participate in class actions.

§ 1617.2 Definitions.

(a) *Class action* means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable State statute or rule of civil procedure applicable in the court in which the action is filed.

(b)(1) *Initiating or participating in any class action* means any involvement at any stage of a class action prior to or after an order granting relief. ''Involvement'' includes acting as amicus curiae, co-counsel or otherwise providing representation relating to a class action.

(2) *Initiating or participating in any class action* does not include representation of an individual client seeking to withdraw from or opt out of a class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief.

§ 1617.3 Prohibition.

Recipients are prohibited from initiating or participating in any class action.

§ 1617.4 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1618—ENFORCEMENT PROCEDURES

Sec.
1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of recipients.
1618.5 Duties of the Corporation.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(a)(3), 2996f(d), and 2996g(e).

SOURCE: 78 FR 10097, Feb. 13, 2013, unless otherwise noted.

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

§ 1618.2 Definitions.

LSC requirements means the provisions of the LSC Act, the Corporation's

appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

Violation means a violation by the recipient of the LSC requirements.

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of recipients.

(a) A recipient shall:

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, has failed to take appropriate remedial or disciplinary action to ensure compliance by its employees with the LSC requirements, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a limited reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

PART 1619—DISCLOSURE OF INFORMATION

Sec.

1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e)).

SOURCE: 42 FR 4848, Jan. 26, 1977, unless otherwise noted.

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's

written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of:

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.

1620.1 Purpose.
1620.2 Definitions.
1620.3 Establishing priorities.
1620.4 Establishing policies and procedures for emergencies.
1620.5 Annual review.
1620.6 Signed written agreement.
1620.7 Reporting.

AUTHORITY: 42 U.S.C. 2996f(a)(2); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134,110 Stat. 1321.

SOURCE: 62 FR 19408, Apr. 21, 1997, unless otherwise noted.

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the recipient's staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested

persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The suggested priorities promulgated by the Legal Services Corporation;

(2) The appraisal described in paragraph (b) of this section;

(3) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(4) The resources of the recipient;

(5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(6) The availability of other sources of training, support, and outreach services;

(7) The relative importance of particular legal problems to the individual clients of the recipient;

(8) The susceptibility of particular problems to solution through legal processes;

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;

(10) Whether legal efforts will result in efficient and economic delivery of legal services; and

(11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing policies and procedures for emergencies.

The governing body of a recipient shall adopt written policies and procedures to guide the recipient in undertaking emergency cases or matters not within the recipient's established priorities. Emergencies include those non-priority cases or matters that require immediate legal action to:

(a) Secure or preserve the necessities of life,

(b) Protect against or eliminate a significant risk to the health or safety of the client or immediate family members, or

(c) Address other significant legal issues that arise because of new and unforeseen circumstances.

§ 1620.5 Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases outside of its priorities.

(b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

(1) The extent to which the objectives of the recipient's priorities have been accomplished;

(2) Changes in the resources of the recipient;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of non-priority emergency cases or matters in a particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

(a) Has read and is familiar with the priorities of the recipient;

(b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and

(c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information

on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.

1621.1 Purpose.
1621.2 Grievance committee.
1621.3 Complaints by applicants about denial legal assistance.
1621.4 Complaints by clients about manner or quality of legal assistance.

AUTHORITY: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1006(b)(3), 42 U.S.C. 2996e(b)(3); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1).

SOURCE: 72 FR 3954, Jan. 29, 2007, unless otherwise noted.

§ 1621.1 Purpose.

This Part is intended to help ensure that recipients provide the highest quality legal assistance to clients as required by the LSC Act and are accountable to clients and applicants for legal assistance by requiring recipients to establish grievance procedures to process complaints by applicants about the denial of legal assistance and clients about the manner or quality of legal assistance provided. This Part is further intended to help ensure that the grievance procedures adopted by recipients will result, to the extent possible, in the provision of an effective remedy in the resolution of complaints.

§ 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and client members of the governing body, in approximately the same proportion in which they are on the governing body.

§ 1621.3 Complaints by applicants about denial of legal assistance.

A recipient shall establish a simple procedure for review of complaints by applicants about decisions to deny legal assistance to the applicant. The procedure shall, at a minimum, provide: A practical method for the recipient to provide applicants with adequate notice of the complaint procedures and how to make a complaint; and an opportunity for applicants to confer with the Executive Director or the Executive Director's designee, and, to the extent practical, with a representative of the governing body. The procedure shall be designed to foster effective communications between the recipient and complaining applicants.

§ 1621.4 Complaints by clients about manner or quality of legal assistance.

(a) A recipient shall establish procedures for the review of complaints by clients about the manner or quality of legal assistance that has been rendered by the recipient to the client.

(b) The procedures shall be designed to foster effective communications between the recipient and the complaining client and, at a minimum, provide:

(1) A method for providing a client, at the time the person is accepted as a client or as soon thereafter as is practical, with adequate notice of the complaint procedures and how to make a complaint;

(2) For prompt consideration of each complaint by the Executive Director or the Executive Director's designee,

(3) An opportunity for the complainant, if the Executive Director or the Executive Director's designee is unable to resolve the matter, to submit an oral or written statement to a grievance committee established by the governing body as required by §1621.2 of this Part. The procedures shall also: provide that the opportunity to submit an oral statement may be accomplished in person, by teleconference, or through some other reasonable alternative; permit a complainant to be accompanied by another person who may speak on that complainant's behalf; and provide that, upon request of the

complainant, the recipient shall transcribe a brief written statement, dictated by the complainant for inclusion in the recipient's complaint file.

(c) Complaints received from clients about the manner or quality of legal assistance that has been rendered by a private attorney pursuant to the recipient's private attorney involvement program under 45 CFR Part 1614 shall be processed in a manner consistent with its responsibilities under 45 CFR §1614.3(d)(3) and with applicable state or local rules of professional responsibility.

(d) A file containing every complaint and a statement of its disposition shall be preserved for examination by LSC. The file shall include any written statement submitted by the complainant or transcribed by the recipient from a complainant's oral statement.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1622.1 Purpose and scope.
1622.2 Definitions.
1622.3 Open meetings.
1622.4 Public announcement of meetings.
1622.5 Grounds on which meetings may be closed or information withheld.
1622.6 Procedures for closing discussion or withholding information.
1622.7 Certification by the General Counsel.
1622.8 Records of closed meetings.
1622.9 Emergency procedures.
1622.10 Report to Congress.

AUTHORITY: Sec. 1004(g), Pub. L. 95–222, 91 Stat. 1619, (42 U.S.C. 2996c(g)).

SOURCE: 49 FR 30940, Aug. 2, 1984, unless otherwise noted.

§ 1622.1 Purpose and scope.

This part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and state Advisory Councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

Board means the Board of Directors of the Legal Services Corporation.

Committee means any formally designated subdivision of the Board established pursuant to §1601.27 of the By-Laws of the Corporation.

Council means a state Advisory Council appointed by a state Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f).

Director means a voting member of the Board or a Council. Reference to actions by or communications to a ''Director'' means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

General Counsel means the General Counsel of the Corporation, or, in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel or a member designated by a council to act as its chief legal officer.

Meetings means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

Public observation means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

Publicly available for the purposes of §1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

Quorum means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the

number of council members authorized to conduct its business.

Secretary means the Secretary of the Corporation, or, in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be posted of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed;

(2) Whether the meeting or a portion thereof is to be open or closed to public observation; and

(3) The name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be posted at least seven calendar days before the meeting, unless a majority of the Directors determines by a recorded vote that Corporation business requires a meeting on fewer than seven days notice. In the event that such a determination is made, public announcement shall be posted at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and the governing body and the program director of each recipient of funds from the Corporation, and of a council meeting to the governing body and program director of each recipient within the same State.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the Directors that Corporation business so requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

[49 FR 30940, Aug. 2, 1984, as amended at 50 FR 30714, July 29, 1985]

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): Provided, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(d) Involve accusing any person of a crime or formally censuring any person;

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Disclose investigatory records compiled for the purpose of enforcing the Act or any other law, or information which if written would be contained in such records, but only to the extent that production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(g) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Corporation action, except that this paragraph shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(h) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the Directors with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) A separate vote of the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under §1622.5. The Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each Director on the question;

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, with reference to the specific exemptions listed in §1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

[49 FR 30940, Aug. 2, 1984, as amended at 50 FR 30714, July 29, 1985]

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, the meeting may be so closed to the public and shall state each relevant exemption. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of meeting or any portion thereof closed to the public pursuant to paragraph (h) of §1622.5, a transcript, a recording, or a set of minutes shall be made.

Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under §1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this part may be pursued in accordance with part 1602 of these regulations.

§ 1622.9 Emergency procedures.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30714, July 29, 1985]

§ 1622.10 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—SUSPENSION PROCEDURES

Sec.
1623.1 Purpose.
1623.2 Definitions.
1623.3 Grounds for suspension.
1623.4 Suspension procedures.
1623.5 Time extensions and waiver.
1623.6 Interim funding.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a)(3), and 2996f(d); Pub. L. 105–119, Title V, Secs. 501(b), 502, and 503, 111 Stat. 2440, 2510–11; Pub. L. 104–134, Title V, Secs. 503(f) and 509(c), 110 Stat. 1321, 1321–53, 1321–58, and 1321–59.

SOURCE: 78 FR 10098, Feb. 13, 2013, unless otherwise noted.

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definitions.

For the purposes of this part the definitions in 45 CFR part 1606 shall apply and also:

Suspension means an action taken during the term of the recipient's current year's grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending prompt corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of the LSC requirements, and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) Prior to a preliminary determination involving a suspension of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion of impartiality described in this section.

(b) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3 of this part, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, prompt corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 business days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 business days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 business days after the recipient's request is received.

(d) The informal meeting shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level at, or equivalent to, the level of an office director or higher.

(e) At the informal meeting, the Corporation and the recipient shall both

have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary. The final determination shall include a summary of the issues raised in the informal conference and presented in any written materials. The final determination need not engage in a detailed analysis of all issues raised.

(g) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(h) If a suspension lasts for more than 30 days, then the recipient may seek review of the suspension by the President. A request may be made in writing on the thirty-first day or any day thereafter, and shall state, in detail, the reasons for seeking review.

(1) The President may not review the suspension appeal if the President has had prior involvement in the suspension proceedings. If the President cannot review, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to §1623.4(a) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the suspension proceedings.

(2) The President's review shall be based on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(3) The President shall affirm, modify, or terminate the suspension through a suspension appeal decision within 15 calendar days of receipt of the appeal by the Corporation, unless the Corporation and the recipient agree to a later date.

(i) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part.

(j) Except as provided in §1623.4(k) of this part, the total time of a suspension shall not exceed 90 calendar days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

(k) When the suspension is based on the grounds in §1623.3(b) of this part, a recipient's funds may be suspended until an acceptable audit is completed. No appeal to the President will be available for audit-based suspensions pursuant to §1623.3(b).

§1623.5 Time extensions and waiver.

(a) Except for the time limits in §1623.4(i) and (j), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 calendar days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation

from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be released to the recipient at the end of the suspension period.

PART 1624—PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

1624.1 Purpose.
1624.2 Application.
1624.3 Definitions.
1624.4 Discrimination prohibited.
1624.5 Accessibility of legal services.
1624.6 Employment.
1624.7 Enforcement.

AUTHORITY: 49 U.S.C. 794; 42 U.S.C. 2996f(a)(1) and (3).

SOURCE: 71 FR 65059, Nov. 7, 2006, unless otherwise noted.

§ 1624.1 Purpose.

The purpose of this part is to assist and provide guidance to legal services programs supported in whole or in part by Legal Services Corporation funds in removing any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and with sections 1007(a) (1) and (3) of the Legal Services Corporation Act, as amended, 42 U.S.C. 2996f(a) (1) and (3), with respect to the provision of services to and employment of persons with disabilities. The requirements of this Part apply in addition to any responsibilities legal services programs may have under applicable requirements of the Americans with Disabilities Act and applicable implementing regulations of the Department of Justice and the Equal Employment Opportunity Commission.

§ 1624.2 Application.

This part applies to each legal services program receiving financial assistance from the Legal Services Corporation.

§ 1624.3 Definitions.

As used in this part, the term:

(a) *Legal services program* means any recipient, as defined by §1600.1 of this chapter, or any other public or private agency, institution, organization, or other entity, or any person to which or to whom financial assistance is extended by the Legal Services Corporation directly or through another agency, institution, organization, entity or person, including any successor, assignee, or transferee of a legal services program, but does not include the ultimate beneficiary of legal assistance;

(b) *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;

(c)(1) *Person with a disability* means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or (iii) is regarded as having such an impairment;

(2) As used in paragraph (c)(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; 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 phrase 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;

(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 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 legal services program 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 impairments; or (C) has none of the impairments defined in paragraph (c)(2)(i) of this section but is treated by a legal services program as having such an impairment;

(d) *Qualified person with a disability* means:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) with respect to other services, a person with a disability who meets the eligibility requirements for the receipt of such services from the legal services program.

(e) *Auxiliary aids and/or other assistive technologies* means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Auxiliary aids and/or other assistive technologies include, but are not limited to, brailled and taped material, interpreters, telecommunications equipment for the deaf, voice recognition software, computer screen magnifiers, screen reader software, wireless amplification systems, and other aids.

§ 1624.4 Discrimination prohibited.

(a) No qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by any legal services program, directly or through any contractual or other arrangement.

(b) A legal services program may not deny a qualified person with a disability the opportunity to participate in any of its programs or activities or to receive any of its services provided at a facility on the ground that the program operates a separate or different program, activity or facility that is specifically designed to serve persons with disabilities.

(c) In determining the geographic site or location of a facility, a legal services program may not make selections that have the purpose or effect of excluding persons with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity of the legal services program.

(d)(1) A legal services program that employs a total of fifteen or more persons, regardless of whether such persons are employed at one or more locations, shall provide, when necessary, appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services. A legal services program is not required to maintain such aids at all times, provided they can be obtained on reasonable notice.

(2) The Corporation may require legal services programs with fewer than fifteen employees to provide auxiliary aids and/or other assistive technologies where the provision of such aids would not significantly impair the ability of the legal services program to provide its services.

(e) A legal services program shall take reasonable steps to ensure that communications with its applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(f) A legal services program may not deny persons with disabilities the opportunity to participate as members of or in the meetings or activities of any planning or advisory board or process established by or conducted by the legal services program, including but

not limited to meetings and activities conducted in response to the requirements of 45 CFR part 1620.

§ 1624.5 Accessibility of legal services.

(a) No qualified person with a disability shall, because a legal services program's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by any legal services program.

(b) A legal services program shall conduct its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. This paragraph does not necessarily require a legal services program to make each of its existing facilities or every part of an existing facility accessible to and usable by persons with disabilities, or require a legal services program to make structural changes in existing facilities when other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of this paragraph, a legal services program shall give priority to those methods that offer legal services to persons with disabilities in the most integrated setting appropriate.

(c) A legal services program shall, to the maximum extent feasible, ensure that new facilities that it rents or purchases are accessible to persons with disabilities. Prior to entering into any lease or contract for the purchase of a building, a legal services program shall submit a statement to LSC certifying that the facilities covered by the lease or contract will be accessible to persons with disabilities, or if the facilities will not be accessible, a detailed description of the efforts the program made to obtain accessible space, the reasons why the inaccessible facility was nevertheless selected, and the specific steps that will be taken by the legal services program to ensure that its services are accessible to persons with disabilities who would otherwise use that facility. After a statement certifying facility accessibility has been submitted, additional statements need not be resubmitted with respect to the same facility, unless substantial changes have been made in the facility that affect its accessibility.

(d) A legal services program shall ensure that new facilities designed or constructed for it are readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to make the altered facilities readily accessible to and usable by persons with disabilities.

§ 1624.6 Employment.

(a) No qualified person with a disability shall, on the basis of disability, be subjected to discrimination in employment by any legal services program.

(b) A legal services program shall make all decisions concerning employment under any program or activity to which this part applies in a manner that ensures that discrimination on the basis of disability does not occur, and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(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, whether or not administered by the legal services program;

(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 social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A legal services program may not participate in any contractual or other relationship with persons, agencies, organizations or other entities such as, but not limited to, employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the legal services program, and organizations providing training and apprenticeship programs, if the practices of such person, agency, organization, or other entity have the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this paragraph.

(e) A legal services program shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the accommodation would impose an undue hardship on the operation of the program.

(1) For purposes of this paragraph (e), reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by persons with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of auxiliary aids and/or other assistive technologies, and other similar actions.

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified employee or applicant with a disability if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against persons with disabilities, and shall ensure that employment tests are adapted for use by persons who have disabilities that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a person with a disability or as to the nature or severity of a disability except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of disability.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of disability.

§ 1624.7 Enforcement.

(a) The procedures described in part 1618 of these regulations shall apply to any alleged violation of this Part by a legal services program.

(b) When LSC receives a complaint of a violation of this part, LSC policy is generally to refer such complainants promptly to the appropriate Federal, state or local agencies, although LSC retains the discretion to investigate all complaints and/or to maintain an open complaint file during the pendency of an investigation being conducted by such other Federal, state or local agency. LSC may use, at its discretion, information obtained by such other agency as may be available to LSC, including findings of such other agency of whether discrimination on the basis of disability occurred.

PART 1625 [RESERVED]

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

1626.1 Purpose.

1626.2 Definitions.
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1626.5 Aliens eligible for assistance based on immigration status.
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AUTHORITY: 42 U.S.C. 2996g(e).

SOURCE: 79 FR 21871, Apr. 18, 2014, unless otherwise noted.

§ 1626.1 Purpose.

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

§ 1626.2 Definitions.

(a) *Anti-abuse statutes* means the Violence Against Women Act of 1994, Pub. L. 103–322, 108 Stat. 1941, as amended, and the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109–162, 119 Stat. 2960 (collectively referred to as ''VAWA''); Section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U); and the incorporation of these statutory provisions in section 502(a)(2)(C) of LSC's FY 1998 appropriation, Public Law 105–119, Title V, 111 Stat. 2440, 2510 as incorporated by reference thereafter; the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (''TVPA''), as amended; and Section 101(a)(15)(T) of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101(a)(15)(T).

(b) *Battered or subjected to extreme cruelty* includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution may be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

(c) *Certification* means the certification prescribed in 22 U.S.C. 7105(b)(1)(E).

(d) *Citizen* means a person described or defined as a citizen or national of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*) (citizens by naturalization) or antecedent citizen statutes.

(e) *Eligible alien* means a person who is not a citizen but who meets the requirements of § 1626.4 or § 1626.5.

(f) *Ineligible alien* means a person who is not a citizen and who does not meet the requirements of § 1626.4 or § 1626.5.

(g) *On behalf of* an ineligible alien means to render legal assistance to an eligible client that benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(h)(1) *Qualifies for immigration relief under section 101(a)(15)(U) of the INA* means:

(i) A person who has been granted relief under that section;

(ii) A person who has applied for relief under that section and who the recipient determines has evidentiary support for such application; or

(iii) A person who has not filed for relief under that section, but who the recipient determines has evidentiary support for filing for such relief.

(2) A person who *qualifies for immigration relief under section 101(a)(15)(U) of the INA* includes any person who may apply for primary U visa relief under subsection (i) of section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)(i)) or for derivative U visa relief for family members under subsection (ii) of section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)(ii)). Recipients may provide assistance for any person who qualifies for derivative U visa relief regardless of whether such a person has been subjected to abuse.

(i) *Rejected* refers to an application for adjustment of status that has been

denied by the Department of Homeland Security (DHS) and is not subject to further administrative appeal.

(j) *Victim of severe forms of trafficking* means any person described at 22 U.S.C. 7105(b)(1)(C).

(k) *Victim of sexual assault or trafficking* means:

(1) *A victim of sexual assault* subjected to any conduct included in the definition of sexual assault in VAWA, 42 U.S.C. 13925(a)(29); or

(2) *A victim of trafficking* subjected to any conduct included in the definition of ''trafficking'' under law, including, but not limited to, local, state, and federal law, and T visa holders regardless of certification from the U.S. Department of Health and Human Services (HHS).

(l) *United States,* for purposes of this part, has the same meaning given that term in section 101(a)(38) of the INA (8 U.S.C. 1101(a)(38)).

[79 FR 30052, May 27, 2014]

§ 1626.3 Prohibition.

Recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

§ 1626.4 Aliens eligible for assistance under anti-abuse laws.

(a) Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law:

(1) A recipient may provide related legal assistance to an alien who is within one of the following categories:

(i) An alien who has been battered or subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(ii) An alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, or has been a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)).

(2)(i) A recipient may provide legal assistance, including but not limited to related legal assistance, to:

(A) An alien who is a victim of severe forms of trafficking of persons in the United States; or

(B) An alien classified as a non-immigrant under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii), regarding others related to the victim).

(ii) For purposes of this part, aliens described in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section include individuals seeking certification as victims of severe forms of trafficking and certain family members applying for immigration relief under section 101(a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii)).

(b) (1) *Related legal assistance* means legal assistance directly related:

(i) To the prevention of, or obtaining relief from, the battery, cruelty, sexual assault, or trafficking;

(ii) To the prevention of, or obtaining relief from, crimes listed in section 101(a)(15)(U)(iii) of the INA (8 U.S.C. 1101(a)(15)(U)(iii)); or

(iii) To an application for relief:

(A) Under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(B) Under section 101(a)(15)(T) of the INA (8 U.S.C. 1101(a)(15)(T)).

(2) Such assistance includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).

(c) *Relationship to the United States.* An alien must satisfy both paragraph (c)(1) and either paragraph (c)(2)(i) or (ii) of this section to be eligible for legal assistance under this part.

(1) *Relation of activity to the United States.* An alien is eligible under this section if the activity giving rise to eligibility violated a law of the United

States, regardless of where the activity occurred, or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

(2) *Relationship of alien to the United States.* (i) An alien defined in §1626.2(b), (h), or (k)(1) need not be present in the United States to be eligible for assistance under this section.

(ii) An alien defined in §1626.2(j) or (k)(2) must be present in the United States to be eligible for assistance under this section.

(d) *Evidentiary support*—(1) *Intake and subsequent evaluation.* A recipient may determine that an alien is qualified for assistance under this section if there is evidentiary support that the alien falls into any of the eligibility categories or if the recipient determines there will likely be evidentiary support after a reasonable opportunity for further investigation. If the recipient determines that an alien is eligible because there will likely be evidentiary support, the recipient must obtain evidence of support as soon as possible and may not delay in order to provide continued assistance.

(2) *Documentary evidence.* Evidentiary support may include, but is not limited to, affidavits or unsworn written statements made by the alien; written summaries of statements or interviews of the alien taken by others, including the recipient; reports and affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; orders of protection or other legal evidence of steps taken to end abuse; evidence that a person sought safe haven in a shelter or similar refuge; photographs; documents; or other evidence of a series of acts that establish a pattern of qualifying abuse.

(3) *Victims of severe forms of trafficking.* Victims of severe forms of trafficking may present any of the forms of evidence listed in paragraph (d)(2) of this section or any of the following:

(i) A certification letter issued by the Department of Health and Human Services (HHS).

(ii) Verification that the alien has been certified by calling the HHS trafficking verification line, (202) 401–5510 or (866) 401–5510.

(iii) An interim eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(iv) An eligibility letter issued by HHS, if the alien was subjected to severe forms of trafficking while under the age of 18.

(e) *Recordkeeping.* Recipients are not required by §1626.12 to maintain records regarding the immigration status of clients represented pursuant to this section. If a recipient relies on an immigration document for the eligibility determination, the recipient shall document that the client presented an immigration document by making a note in the client's file stating that a staff member has seen the document, the type of document, the client's alien registration number (''A number''), the date of the document, and the date of the review, and containing the signature of the staff member that reviewed the document.

(f) *Changes in basis for eligibility.* If, during the course of representing an alien eligible pursuant to §1626.4(a)(1), a recipient determines that the alien is also eligible under §1626.4(a)(2) or §1626.5, the recipient should treat the alien as eligible under that section and may provide all the assistance available pursuant to that section.

§1626.5 Aliens eligible for assistance based on immigration status.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General or the Secretary of DHS under section 208 of the INA (8 U.S.C. 1158);

(d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7), as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation or exclusion under section 243(h) of the INA (8 U.S.C. 1253(h), as in effect on April 16, 1996) or withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)); or

(f) An alien who meets the requirements of §1626.10 or §1626.11.

§1626.6 Verification of citizenship.

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race, or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form 1–197 or I–197); or

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document, such as a document issued by DHS, by a court, or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

§1626.7 Verification of eligible alien status.

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic, of any documents establishing eligibility. LSC will publish a list of examples of such documents from time to time in the form of a program letter or equivalent.

(2) A recipient may also accept any other authoritative document issued by DHS, by a court, or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a current list of documents establishing eligibility under this part as is published by LSC.

§1626.8 Emergencies.

In an emergency, legal services may be provided prior to compliance with §§1626.4, 1626.6, and 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation

to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

§ 1626.9 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

§ 1626.10 Special eligibility questions.

(a)(1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and Control Act (''IRCA'') is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 101(a)(20) of the INA (8 U.S.C. 1101(a)(20)), these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

§ 1626.11 H–2 agricultural and forestry workers.

(a) Nonimmigrant agricultural workers admitted to, or permitted to remain in, the United States under the provisions of section 101(a)(15)(h)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(h)(ii)(a)), commonly called H–2A agricultural workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(b) Nonimmigrant forestry workers admitted to, or permitted to remain in, the United States under the provisions of section 101(a)(15)(h)(ii)(b) of the INA (8 U.S.C. 1101(a)(15)(h)(ii)(b)), commonly called H–2B forestry workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(c) The following matters which arise under the provisions of the worker's specific employment contract may be

the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.12 Recipient policies, procedures, and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[79 FR 21871, Apr. 18, 2014]

PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

Sec.

1627.1 Purpose.
1627.2 Definitions.
1627.3 Requirements for all subgrants.
1627.4 Membership fees or dues.
1627.5 Contributions.
1627.6 Transfers to other recipients.
1627.7 Tax sheltered annuities, retirement accounts and pensions.
1627.8 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e); Pub. L. 104–208, 110 Stat 3009; Pub. L. 104–134, 110 Stat 1321.

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1627.2 Definitions.

(a) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act *and* any grantee or contractor receiving funds from the Corporation under section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) *Subrecipient* shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

(2) *Subgrant* shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) *Membership fees or dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

[48 FR 54209, Nov. 30, 1983, as amended at 61 FR 45754, Aug. 29, 1996; 62 FR 19418, Apr. 21, 1997]

§ 1627.3 Requirements for all subgrants.

(a)(1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and

conditions of the subgrant and the amount of funds intended to be transferred.

(2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation of this failure and, unless the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.

(3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.

(4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the subrecipient 60 days' funding to close out the subgrant activities.

(b)(1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.

(2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.

(3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.

(c) Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for Recipients and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization receives a small subgrant. If such an alternate means is approved by the Audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

(d) The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.

(e) To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 CFR chapter XVI), and Corporation Guidelines or Instructions, contracts between a recipient and a subrecipient shall provide for the same oversight rights for the Corporation with respect to subrecipients as apply to recipients.

[48 FR 54209, Nov. 30, 1983, as amended at 49 FR 1703, Jan. 13, 1984]

§ 1627.4 Membership fees or dues.

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a

profession, or to the payment of membership fees or dues from non-LSC funds.

[62 FR 19418, Apr. 21, 1997]

§ 1627.5 Contributions.

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

§ 1627.6 Transfers to other recipients.

(a) The requirements of §1627.3 shall apply to all subgrants by one recipient to another recipient.

(b) The subrecipient shall audit any funds subgranted to it in its annual audit and supply a copy of this audit to the recipient. The recipient shall either submit the relevant part of this audit with its next annual audit or, if an audit has been recently submitted, submit it as an addendum to that recently submitted audit.

(c) In addition to the provisions of §1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

(d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

§ 1627.7 Tax sheltered annuities, retirement accounts and pensions.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

[62 FR 19418, Apr. 21, 1997]

§ 1627.8 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19418, Apr. 21, 1997]

PART 1628—RECIPIENT FUND BALANCES

Sec.
1628.1 Purpose.
1628.2 Definitions.
1628.3 Policy.
1628.4 Procedures.
1628.5 Fund balance deficits.

AUTHORITY: 42 U.S.C. 2996g(e).

SOURCE: 65 FR 66642, Nov. 7, 2000, unless otherwise noted.

§ 1628.1 Purpose

The purpose of this part is to set out the Corporation's policies and procedures applicable to recipient fund balances. The Corporation's fund balance policies are intended to ensure the timely expenditure of LSC funds for the effective and economical provision of high quality legal assistance to eligible clients.

§ 1628.2 Definitions.

(a) *Excess fund balance* means a recipient's LSC fund balance that exceeds the amount a recipient is permitted to retain under this part.

(b) *LSC support* means the sum of:

(1) The amount of financial assistance awarded by the Corporation to the recipient for the fiscal year included in the recipient's annual audited financial statement, not including one-time and special purpose grants; and

(2) Any LSC derivative income, as defined in §1630.2(c), earned by the recipient for the fiscal year included in the recipient's annual audited financial statement, not including derivative income from one-time and special purpose grants.

(c) The LSC *fund balance* is the excess of LSC support plus the prior year carryover amount over expenditures of LSC funds (including capital acquisitions), as each is reported in the recipient's annual financial statements.

(d) The *fund balance percentage* is the amount of the LSC fund balance expressed as a percentage of the recipient's LSC support.

(e) *Recipient*, as used in this part, means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

§ 1628.3 Policy.

(a) Recipients are permitted to retain from one fiscal year to the next LSC fund balances up to 10% of their LSC support.

(b) Recipients may request a waiver to retain a fund balance up to a maximum of 25% of their LSC support for special circumstances.

(c) Recipients may request a waiver to retain a fund balance in excess of 25% of a recipient's LSC support only for extraordinary and compelling circumstances, such as when a natural disaster or other catastrophic event prevents the timely expenditure of LSC funds, or when the recipient receives an insurance reimbursement, the proceeds from the sale of real property, a payment from a lawsuit in which the recipient was a party, or a payment from an LSC-funded lawsuit, regardless of whether the recipient was a party to the lawsuit.

(d) A waiver pursuant to paragraph (b) or (c) of this section may be granted at the discretion of the Corporation pursuant to the criteria set out in §1628.4(e).

(e) In the absence of a waiver, a fund balance in excess of 10% of LSC support shall be repaid to the Corporation. If a waiver of the 10% ceiling is granted, any fund balance in excess of the amount permitted to be retained shall be repaid to the Corporation.

(f) A recovery of an excess fund balance pursuant to this part does not constitute a termination under 45 CFR part 1606. *See* §1606.2(c)(2)(ii).

(g) One-time and special purpose grants awarded by the Corporation are not subject to the fund balance policy set forth in this part. Revenue and expenses relating to such grants shall be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the expiration date of the grant without the prior written approval of the Corporation. Absent approval from the Corporation, all unexpended funds under such grants shall be returned to the Corporation.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

§ 1628.4 Procedures.

(a) A recipient may request a waiver of the 10% ceiling on LSC fund balances within 30 days after the submission to LSC of its annual audited financial statements. The request shall specify:

(1) The LSC fund balance as reported in the recipient's annual audited financial statements;

(2) The reason(s) for the excess fund balance;

(3) The recipient's plan for disposing of the excess fund balance during the current fiscal year;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's current fiscal year; and

(5) The special circumstances justifying the retention of the excess fund balance up to 25%, or the extraordinary and compelling circumstances set out in §1628.3(c) justifying a fund balance in excess of 25%.

(b) Within 45 days of receipt of the recipient's waiver request submitted pursuant to paragraph (a) of this section, the Corporation shall provide a written response to the request and a written notice to the recipient of any fund balance due and payable to the Corporation as well as the method for repayment.

(c) In the event that repayment is required, the Corporation shall give written notice 30 days prior to the effective date for repayment. Repayment shall be in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Corporation shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(d) A recipient may submit a waiver request to retain a fund balance in excess of 25% of its LSC support prior to

the submission of its audited financial statements. The Corporation may, at its discretion, provide approval in writing. The request shall specify the extraordinary and compelling circumstances justifying the fund balance in excess of 25%; the estimated fund balance that the recipient anticipates it will accrue by the time of the submission of its audited financial statements; and the recipient's plan for disposing of the excess fund balance. Upon the submission of its annual audited financial statements, the recipient must submit updated information consistent with the requirements of paragraph (a) of this section to confirm the actual fund balance to be retained.

(e) The Corporation's written approval of a request for a waiver shall require that the recipient use the funds it is permitted to retain within the time period set out in the approval and for the purposes approved by the Corporation.

(f) Excess fund balances approved by the Corporation for expenditure by a recipient shall be separately reported by natural line item in the current fiscal year's audited financial statements. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

(g) The recipient shall promptly inform and seek guidance from the Corporation when it determines a need for any changes to the conditions on timing or purposes set out in the Corporation's written approval of a recipient's request for a waiver.

[65 FR 66642, Nov. 7, 2000, as amended at 80 FR 43968, July 24, 2015]

§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those set out in Chapter 3 of the Corporation's Accounting Guide for LSC Recipients should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period requires the prior written approval of the Corporation.

(b) Within 30 days of the submission of the recipient's annual audit, the recipient may apply to the Corporation for approval of the expenses associated with the liquidation of the deficit balance in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs under 45 CFR part 1630.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in §1628.4(a)(1) and (2). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the statutory mandate requiring the recipient to provide high quality legal services performed in an effective and economical manner. Special consideration will be given for emergencies, unusual occurrences, or other special circumstances giving rise to a deficit balance.

PART 1629—BONDING OF RECIPIENTS

Sec.
1629.1 General.
1629.2 Persons required to be bonded.
1629.3 Criteria for determining handling.
1629.4 Meaning of fraud or dishonesty.
1629.5 Form of bonds.
1629.6 Effective date.

AUTHORITY: Secs. 1006(b)(1)(A) and 1007(a)(3), Pub. L. 93–355, as amended, Pub. L. 95–222 (42 U.S.C. 2996e(1)(A) and 2996f(3)).

SOURCE: 49 FR 28717, July 16, 1984, unless otherwise noted.

§ 1629.1 General.

(a) If any program which receives Corporation funds is not a government, or an agency or instrumentality thereof, such program shall carry fidelity bond coverage at a minimum level of at least ten (10) percent of the program's annualized LSC funding level for the previous fiscal year, or of the initial grant or contract, if the program is a new grantee or contractor.

No coverage carried pursuant to this part shall be at a level less than $50,000.

(b) A fidelity bond is a bond indemnifying such program against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers, agents, directors or other persons holding a position of trust with the program.

§ 1629.2 Persons required to be bonded.

(a) Every director, officer, employee and agent of a program who handles funds or property of the program shall be bonded as provided in this part.

(b) Such bond shall provide protection to the program against loss by reason of acts of fraud or dishonesty on the part of such director, officer, employee or agent directly or through connivance with others.

§ 1629.3 Criteria for determining handling.

(a) The term ''handles'' shall be deemed to encompass any relationship of a director, officer, employee or agent with respect to funds or other property which can give rise to a risk of loss through fraud or dishonesty. This shall include relationships such as those which involve access to funds or other property or decision-making powers with respect to funds or property which can give rise to such risk of loss.

(b) Subject to the application of the basic standard of risk of loss to each situation, the criteria for determining whether there is ''handling'' so as to require bonding are:

(1) Physical contact with cash, checks or similar property;

(2) The power to secure physical possession of cash, checks or similar property such as through access to a safe deposit box or similar depository, access to cash or negotiable instruments and assets, power of custody or safekeeping, or the power to borrow or withdraw funds from a bank or other account whether or not physical contact actually takes place;

(3) The power to transfer or cause to be transferred property such as mortgages, title to land and buildings, or securities, through actual or apparent authority, to oneself or to a third party, or to be negotiated for value.

(c) Persons who actually disburse funds or other property, such as officers authorized to sign checks or other negotiable instruments, or persons who make cash disbursements, shall be considered to be ''handling'' such funds or property.

(d) In connection with disbursements, any persons with the power to sign or endorse checks or similar instruments or otherwise render them transferable, whether individually or as cosigners with one or more persons, shall each be considered to be ''handling'' such funds or other property.

(e) To the extent a person's supervisory or decision-making responsibility involves factors in relationship to funds discussed in paragraphs (b) (1), (2), (3), or paragraphs (c) and (d) of this section, such persons shall be considered to be ''handling'' in the same manner as any person to whom the criteria of those subparagraphs apply.

§ 1629.4 Meaning of fraud or dishonesty.

The term ''fraud or dishonesty'' shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in the handling of funds as delineated in § 1629.3. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court could afford recovery under a bond providing protection against fraud or dishonesty. As applied under state laws, the term ''fraud or dishonesty'' encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts.

§ 1629.5 Form of bonds.

Any form of bond which may be described as individual, schedule or blanket, or any combination of such forms of bonds, shall be acceptable to meet the requirements of this part. The

basic types of bonds in general usage are:

(a) An individual bond which covers a named individual in a stated penalty;

(b) A name schedule bond which covers a number of named individuals in the respective amounts set opposite their names;

(c) A position schedule bond which covers all of the occupants of positions listed in the schedule in the respective amounts set opposite such positions;

(d) A blanket bond which covers all the insured's directors, officers, employees and agents with no schedule or list of those covered being necessary and with all new directors, officers, employees and agents bonded automatically, in a blanket penalty.

§ 1629.6 Effective date.

(a) Each program shall certify in its Application for Refunding, beginning with the application for FY 1985 funds, that it has obtained a bond or bonds which satisfy the requirements of this part.

(b) A copy of such bond or bonds shall be provided to the Corporation at its request.

PART 1630—COST STANDARDS AND PROCEDURES

Sec.

1630.1 Purpose.
1630.2 Definitions.
1630.3 Standards governing allowability of costs under Corporation grants or contracts.
1630.4 Burden of proof.
1630.5 Costs requiring Corporation prior approval.
1530.6 Timetable and basis for granting prior approval.
1630.7 Review of questioned costs and appeal of disallowed costs.
1630.8 Recovery of disallowed costs and other corrective action.
1630.9 Other remedies; effect on other parts.
1630.10 Applicability to subgrants.
1630.11 Applicability to non-LSC funds.
1630.12 Applicability to derivative income.
1630.13 Time.

AUTHORITY: 5 U.S.C. App. 3, 42 U.S.C. 2996e, 2996f, 2996g, 2996h(c)(1), and 2996i(c); Pub. L. 105–119, 111 Stat. 2440; Pub. L. 104–134, 110 Stat. 3009.

SOURCE: 62 FR 68224, Dec. 31, 1997, unless otherwise noted.

§ 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

§ 1630.2 Definitions.

(a) *Allowed costs* means a questioned cost that the Corporation, in a management decision, has determined to be eligible for payment from a recipient's Corporation funds.

(b) *Corrective action* means action taken by a recipient that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(c) *Derivative income* means income earned by a recipient from Corporation-supported activities during the term of a Corporation grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on Corporation grant or contract advances.

(d) *Disallowed cost* means a questioned cost that the Corporation, in a management decision, has determined should not be charged to a recipient's Corporation funds.

(e) *Final action* means the completion of all actions that Corporation management, in a management decision, has concluded are necessary with respect to the findings and recommendations in an audit or other report. In the event that Corporation management concludes no corrective action is necessary, final action occurs when a management decision has been made.

(f) *Management decision* means the evaluation by Corporation management of findings and recommendations in an audit or other report and the recipient's response to the report, and the issuance of a final, written decision by management concerning its response to such findings and recommendations, including any corrective actions which Corporation management has concluded are necessary

to address the findings and recommendations.

(g) *Questioned cost* means a cost that a recipient has charged to Corporation funds which Corporation management, the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has questioned because of an audit or other finding that:

(1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of Corporation funds;

(2) The cost is not supported by adequate documentation; or

(3) The cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances.

(h) *Recipient* as used in this part means any grantee or contractor receiving funds from the Corporation under sections 1006(a)(1) or 1006(a)(3) of the Act.

[62 FR 68225, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.3 Standards governing allowability of costs under Corporation grants or contracts.

(a) *General criteria.* Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by the Corporation;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles;

(8) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that Corporation funds may be used for federal matching purposes; and

(9) Adequately and contemporaneously documented in business records accessible during normal business hours to Corporation management, the Office of Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. If a questioned cost is disallowed solely on the ground that it is excessive, only the amount that is larger than reasonable shall be disallowed. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the established practices of the recipient which may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative

benefits received. Costs may be allocated to Corporation funds either as direct or indirect costs according to the provisions of this section. A cost is allocable to a Corporation grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the grant or contract;

(2) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown.

(d) *Direct costs.* Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts. Salary and wages charged directly to Corporation grants and contracts must be supported by personnel activity reports.

(e) *Indirect costs.* Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is not directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) *Allocation of indirect costs.* Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

(g) *Exception for certain indirect costs.* Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to Corporation funds, provided that the activity associated with the indirect cost is permissible under the LSC Act and regulations.

(h) *Applicable credits.* Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) *Guidance.* The Circulars of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, Corporation rules, regulations, guidelines, instructions, and other applicable law.

[62 FR 68225, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.4 Burden of proof.

The recipient shall have the burden of proof under this part.

§ 1630.5 Costs requiring Corporation prior approval.

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, recipients may seek a written understanding from the Corporation in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from the Corporation, the absence of an advance understanding on any element of a cost does not affect the reasonableness or allocability of the cost.

(b) *Prior approvals.* Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to Corporation funds:

(1) Pre-award costs and costs incurred after the cessation of funding;

(2) Purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds $10,000;

(3) Purchases of real property; and

(4) Capital expenditures exceeding $10,000 to improve real property.

(c) *Duration.* The Corporation's approval or advance understanding shall be valid for one year, or for a greater period of time which the Corporation may specify in its approval or understanding.

§ 1630.6 Timetable and basis for granting prior approval.

(a) The Corporation shall grant prior approval of a cost if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. If the Corporation denies a request for approval, it shall provide to the recipient a written explanation of the grounds for denying the request.

(b) Except as provided in paragraphs (c) and (d) of this section, the Corporation may not assert the absence of prior approval as a basis for disallowing a questioned cost, if the Corporation has not responded to a written request for approval within sixty (60) days of receiving the request.

(c) If additional information is necessary to enable the Corporation to respond to a request for prior approval, the Corporation may make a written request for additional information within forty-five (45) days of receiving the request for approval.

(d) If the Corporation has made a written request for additional information about a cost as provided by paragraph (c) of this section, and if the Corporation has not responded within thirty (30) days of receiving in writing all additional, requested information, the Corporation may not assert the absence of prior approval as a basis for disallowing the cost.

§ 1630.7 Review of questioned costs and appeal of disallowed costs.

(a) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to the Corporation, Corporation management shall review the findings of the Office of Inspector General, General Accounting Office, or independent auditor or other authorized audit organization, as well as the recipient's written response to the findings, in order to determine accurately the amount of the questioned cost, the factual circumstances giving rise to the cost, and the legal basis for disallowing the cost. Corporation management may also identify questioned costs in the course of its oversight of recipients.

(b) If Corporation management determines that there is a basis for disallowing a questioned cost, and if not more than five years have elapsed since the recipient incurred the cost, Corporation management shall provide to the recipient written notice of its intent to disallow the cost. The written notice shall state the amount of the cost and the factual and legal basis for disallowing it.

(c) Within thirty (30) days of receiving written notice of the Corporation's intent to disallow the questioned cost, the recipient may respond with written evidence and argument to show that

the cost was allowable, or that the Corporation, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments. If the recipient does not respond to the Corporation's written notice, Corporation management shall issue a management decision on the basis of information available to it.

(d) Within sixty (60) days of receiving the recipient's written response to the notice of intent to disallow the questioned cost, Corporation management shall issue a management decision stating whether or not the cost has been disallowed, the reasons for the decision, and the method of appeal as provided in this section.

(1) If Corporation management has determined that the questioned cost should be allowed, and that no corrective action by the recipient is necessary, final action with respect to the questioned cost occurs at the time when the Corporation issues the management decision.

(2) If Corporation management has determined that the questioned cost should be disallowed, the management decision shall also describe the expected recipient action to repay the cost, including the method and schedule for collection of the amount of the cost. The management decision may also require the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

(e) If the amount of a disallowed cost exceeds $2,500, the recipient may appeal in writing to the Corporation President within thirty (30) days of receiving the Corporation's management decision to disallow the cost. The written appeal should state in detail the reasons why the Corporation should not disallow part or all of the questioned cost. If the amount of a disallowed cost does not exceed $2,500, or if the recipient elects not to appeal the disallowance of a cost in excess of $2,500, the Corporation's management decision shall be final.

(f) Within thirty (30) days of receipt of the recipient's appeal of a disallowed cost in excess of $2,500, the President shall either adopt, modify, or reverse the Corporation's management decision to disallow the cost. If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal. The President shall also have discretion, in circumstances where the President has not had prior involvement in the disallowed cost, to designate another senior Corporation employee to review the recipient's appeal, provided that the senior Corporation employee has not had prior involvement in the disallowed cost.

(g) The decision of the President or designee shall be final and shall be based on the written record, consisting of the Corporation's notice of intent to disallow the questioned cost, the recipient's response, the management decision, the recipient's written appeal, any additional response or analysis provided to the President or designee by Corporation staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, the Corporation shall provide a copy of the written record to the recipient.

§ 1630.8 Recovery of disallowed costs and other corrective action.

(a) The Corporation shall recover any disallowed costs from the recipient within the time limits and conditions set forth in the Corporation's management decision. Recovery of the disallowed costs may be in the form of a reduction in the amount of future grant checks or in the form of direct payment from the recipient to the Corporation.

(b) The Corporation shall ensure that a recipient which has incurred a disallowed cost takes any additional, necessary corrective action within the time limits and conditions set forth in the Corporation's management decision. The recipient shall have taken final action when the recipient has repaid all disallowed costs and has taken all corrective action which the Corporation has stated in its management decision is necessary to prevent the recurrence of circumstances giving rise to a questioned cost.

(c) In the event of an appeal of the Corporation's management decision, the decision of the President or designee shall supersede the Corporation's management decision, and the recipient shall repay any disallowed costs and take necessary corrective action according to the terms and conditions of the decision of the President or designee.

§ 1630.9 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation shall refer the matter to the Office of Inspector General, and may take appropriate action pursuant to parts 1606, 1623, 1625, and 1640 of this chapter.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in the annualized funding level of the recipient, nor does it constitute a termination of financial assistance under part 1606, a suspension of funding under part 1623, or a denial of refunding under part 1625.

§ 1630.10 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of Corporation funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

§ 1630.11 Applicability to non-LSC funds.

(a) No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with section 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(b) According to the review and appeal procedures of 45 CFR 1630.7, the Corporation may recover from a recipient's Corporation funds an amount not to exceed the amount improperly charged to non-LSC funds.

§ 1630.12 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income which is allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part, including the requirement of 45 CFR 1630.3(a)(4) that expenditures of such funds be in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC recipients, the terms and conditions of the grant or contract, and other applicable law.

[62 FR 68227, Dec. 31, 1997; 63 FR 1532, Jan. 9, 1998]

§ 1630.13 Time.

(a) *Computation.* Time limits specified in this part shall be computed in accordance with Rules 6(a) and 6(e) of the Federal Rules of Civil Procedure.

(b) *Extensions.* The Corporation may, on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.

PART 1631 [RESERVED]

PART 1632—REDISTRICTING

Sec.
1632.1 Purpose.
1632.2 Definitions.
1632.3 Prohibition.
1632.4 Recipient policies.

AUTHORITY: 42 U.S.C. 2996e(b)(1)(A); 2996f(a)(2)(C); 2996f(a)(3); 2996(g)(e); 110 Stat. 3009; 110 Stat. 1321(1996).

SOURCE: 61 FR 63756, Dec. 2, 1996, unless otherwise noted.

§ 1632.1 Purpose.

This part is intended to ensure that recipients do not engage in redistricting activities.

§ 1632.2 Definitions.

(a) *Advocating or opposing any plan* means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

(b) *Recipient* means any grantee or contractor receiving funds made available by the Corporation under sections 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, *recipient* includes subrecipient and employees of recipients and subrecipients.

(c) *Redistricting* means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

§ 1632.3 Prohibition.

(a) Neither the Corporation nor any recipient shall make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting.

(b) This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 *et seq.*, provided such litigation does not involve redistricting.

§ 1632.4 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.

1633.1 Purpose.
1633.2 Definitions.
1633.3 Prohibition.
1633.4 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(a), 2996e(b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e); 110 Stat. 3009; 110 Stat. 1321 (1996).

SOURCE: 61 FR 63758, Dec. 2, 1996, unless otherwise noted.

§ 1633.1 Purpose.

This part is designed to ensure that in certain public housing eviction proceedings recipients refrain from defending persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) *Controlled substance* has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) *Public housing project* and *public housing agency* have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) *Charged with* means that a person is subject to a pending criminal proceeding instituted by a governmental entity with authority to initiate such proceeding against that person for engaging in illegal drug activity.

§ 1633.3 Prohibition.

Recipients are prohibited from defending any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and

(b) The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.
1634.1 Purpose.
1634.2 Definitions.
1634.3 Competition for grants and contracts.
1634.4 Announcement of competition.
1634.5 Identification of qualified applicants for grants and contracts.
1634.6 Notice of intent to compete.
1634.7 Application process.
1634.8 Selection process.
1634.9 Selection criteria.
1634.10 Transition provisions.
1634.11 Replacement of recipient that does not complete grant term.
1634.12 Emergency procedures and waivers.

AUTHORITY: 42 U.S.C. 2996e(a)(1)(A); 2996f(a)(3).

SOURCE: 61 FR 14258, Apr. 1, 1996, unless otherwise noted.

§ 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purposes of such a competitive system are to:

(a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

§ 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in section 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards of grants or contracts for the delivery of legal assistance to eligible clients. A majority of review panel members shall be lawyers who are supportive of the purposes of the LSC Act and experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. The remaining members of the review panel shall be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of quality legal services to the poor. No person may serve on a review panel for an applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by that applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

§ 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under Section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of

legal assistance shall be awarded by the Corporation for any period after the effective date of this part, unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) Wherever possible, the Corporation shall award no more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area. The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area only when the Corporation determines that it is necessary to award more than one such grant or contract in order to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act or other applicable law.

(e) In no event may the Corporation award a grant or contract for a term longer than five years. The amount of funding provided annually under each such grant or contract is subject to changes in congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated to the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

§ 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process, shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations, and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: who may apply, application procedures, the selection process, selection criteria, the service areas that will be the subject of the competitive bidding process, the amount of funding available for the service area, if known, applicable timetables and deadlines, and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make a copy of the RFP available to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

§ 1634.5 Identification of qualified applicants for grants and contracts.

(a) The following persons, groups and entities are qualified applicants who may submit a notice of intent to compete and an application to participate in the competitive bidding process:

(1) Current recipients;

(2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;

(3) Private attorneys, groups of attorneys or law firms (except that no private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);

(4) State or local governments;

(5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this chapter or other law that sets out requirements for recipients' governing bodies, unless such governing body requirements are inconsistent with applicable law.

(c) Applications may be submitted jointly by more than one qualified applicant so long as the application delineates the respective roles and responsibilities of each qualified applicant.

§ 1634.6 Notice of intent to compete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) At the time of the filing of the notice of intent to compete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

(1) Names and resumes of principals and key staff;

(2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;

(3) Initial description of area proposed to be served by the applicant and the services to be provided.

§ 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. Incomplete applications will not be considered for awards by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

§ 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past six years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the review process; and

(5) Convene a review panel unless there is only one applicant for a particular service area and the Corporation determines that use of a review panel is not appropriate. The review panel shall:

(i) Review the applications and the summaries prepared by the Corporation staff. The review panel may request other information identified by the Corporation as necessary to evaluate the applications fully; and

(ii) Make a written recommendation to the Corporation regarding the award

of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the President. The staff recommendation shall include the recommendation of the review panel and, if the staff recommendation differs from that of the review panel, an explanation of the basis for the difference in the recommendations.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application.

(c) In the event that there are no applicants for a service area or that the Corporation determines that no applicant meets the criteria and therefore determines not to award a grant or contract for a particular service area, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.9 Selection criteria.

(a) The criteria to be used to select among qualified applicants shall include the following:

(1) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(2) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(3) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law in accordance with a time schedule set out by the Corporation;

(4) The applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicant's compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to Federal or State agencies, bar associations or foundations, courts, IOLTA programs, and private foundations;

(5) The reputations of the applicant's principals and key staff;

(6) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with the various components as appropriate to assure the availability of a full range of legal assistance, including:

(i) its capacity to cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients; and

(ii) its knowledge of and willingness to cooperate with other legal services providers, community groups, public interest organizations and human services providers in the service area;

(7) The applicant's capacity to develop and increase non-Corporation resources;

(8) The applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters; and

(9) The applicant does not have known or potential conflicts of interest, institutional or otherwise, with

the client community and demonstrates a capacity to protect against such conflicts.

(b) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

§ 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant, other than the current recipient, to serve the area currently served by that recipient, the Corporation—

(1) may provide, if the law permits, continued funding to the current recipient, for a period of time and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transfer of such cases or matters to the new recipient or to other appropriate legal service providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided; and

(2) shall ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds consistent with the Corporation's policies.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to utilize Corporation funds in an effective and economical manner.

§ 1634.11 Replacement of recipient that does not complete grant term.

In the event that a recipient is unable or unwilling to continue to perform the duties required under the terms of its grant or contract, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.12 Emergency procedures and waivers.

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a) (3) and (5) when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping requirement.
1635.4 Administrative provisions.

AUTHORITY: 42 U.S.C. §§ 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

SOURCE: 65 FR 41882, July 7, 2000, unless otherwise noted.

§ 1635.1 Purpose.

This part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of LSC funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A *case* is a form of program service in which an attorney or paralegal of a recipient provides legal services to

one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A *matter* is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as but not limited to, community education presentations, operating *pro se* clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, referral, intake when no case is undertaken, and tracking substantive law developments.

(c) *Restricted activities* means those activities that recipients may not undertake as set out in 45 CFR part 1610.

(d) A *supporting activity* is any action that is not a case or matter, including management in general, and fund-raising.

§ 1635.3 Timekeeping requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type.

(d) Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities. The certification requirement does not apply to a *de minimis* action related to a restricted activity. Actions consistent with the *de minimis* standard are those that meet all or most of the following criteria: actions that are of little substance; require little time; are not initiated by the part-time employee; and, for the most part, are unavoidable. Certifications shall be made on a quarterly basis and shall be made on a form determined by LSC.

§ 1635.4 Administrative provisions.

Time records required by this section shall be available for examination by auditors and representatives of LSC, and by any other person or entity statutorily entitled to access to such records. LSC shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS

Sec.

1636.1 Purpose.
1636.2 Requirements.
1636.3 Access to written statements.
1636.4 Applicability.
1636.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 62 FR 19420, Apr. 21, 1997, unless otherwise noted.

§ 1636.1 Purpose.

The purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient identifies the plaintiff it represents to the defendant and ensures that the plaintiff has a colorable claim.

§ 1636.2 Requirements.

(a) When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) Identify each plaintiff it represents by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) Prepare a dated written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of facts, provided that the statement is prepared and signed as soon as possible thereafter.

§ 1636.3 Access to written statements.

(a) Written statements of facts prepared in accordance with this part are to be kept on file by the recipient and made available to the Corporation or to any Federal department or agency auditing or monitoring the activities of the recipient or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any person or party other than those listed in paragraph (a) of this section any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access to the statement of facts by such other persons or parties is governed by applicable law and the discovery rules of the court in which the action is brought.

§ 1636.4 Applicability.

This part applies to cases for which private attorneys are compensated by the recipient as well as to those cases initiated by the recipient's staff.

§ 1636.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1637—REPRESENTATION OF PRISONERS

Sec.

1637.1 Purpose.
1637.2 Definitions.
1637.3 Prohibition.
1637.4 Change in circumstances.
1637.5 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996g(e); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 62 FR 19422, Apr. 21, 1997, unless otherwise noted.

§ 1637.1 Purpose.

This part is intended to ensure that recipients do not participate in any civil litigation on behalf of persons incarcerated in Federal, State or local prisons.

§ 1637.2 Definitions.

(a) *Incarcerated* means the involuntary physical restraint of a person who has been arrested for or convicted of a crime.

(b) *Federal, State or local prison* means any penal facility maintained under governmental authority.

§ 1637.3 Prohibition.

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

§ 1637.4 Change in circumstances.

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

§ 1637.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1638—RESTRICTION ON SOLICITATION

Sec.

1638.1 Purpose.
1638.2 Definitions.
1638.3 Prohibition.
1638.4 Permissible activities.
1638.5 Recipient policies.

AUTHORITY: Sec. 504(a)(18), Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 62 FR 19424, Apr. 21, 1997, unless otherwise noted.

§ 1638.1 Purpose.

This part is designed to ensure that recipients and their employees do not solicit clients.

§ 1638.2 Definitions.

(a) *In-person* means a face-to-face encounter or a personal encounter via other means of communication such as a personal letter or telephone call.

(b) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice and with whom the recipient does not have an attorney-client relationship.

§ 1638.3 Prohibition.

(a) Recipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice.

(b) Recipients and their employees are also prohibited from referring to other recipients individuals to whom they have given in-person unsolicited advice.

§ 1638.4 Permissible activities.

(a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them.

(b) A recipient may represent an otherwise eligible individual seeking legal assistance from the recipient as a result of information provided as described in §1638.4(a), provided that the request has not resulted from in-person unsolicited advice.

(c) This part does not prohibit representation or referral of clients by recipients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including those who are institutionalized or are physically or mentally disabled.

§ 1638.5 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

PART 1639—WELFARE REFORM

Sec.
1639.1 Purpose.
1639.2 Definitions.
1639.3 Prohibition.
1639.4 Permissible representation of eligible clients.
1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.
1639.6 Recipient policies and procedures.

AUTHORITY: 42 U.S.C. 2996g(e); Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

SOURCE: 62 FR 30766, June 5, 1997, unless otherwise noted.

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation involving, or challenge or participate in, efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

An effort to reform a Federal or State welfare system includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested programs conducted by States or by counties with State funding or under State mandates.

[67 FR 19343, Apr. 19, 2002]

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system.

(b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system.

(c) Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency.

[62 FR 30766, June 5, 1997, as amended at 67 FR 19343, Apr. 19, 2002]

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of 45 CFR 1612.6 (a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body,

or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

PART 1640—APPLICATION OF FEDERAL LAW TO LSC RECIPIENTS

Sec.
1640.1 Purpose.
1640.2 Applicable Federal laws.
1640.3 Contractual agreement.
1640.4 Violation of agreement.

AUTHORITY: 42 U.S.C. 2996e(g).

SOURCE: 80 FR 21656, Apr. 20, 2015, unless otherwise noted.

§ 1640.1 Purpose.

The purpose of this part is to ensure that recipients use their LSC funds in accordance with Federal law related to the proper use of Federal funds. This part also provides notice to recipients of the consequences of a violation of such Federal laws by a recipient, its employees or board members.

§ 1640.2 Applicable federal laws.

(a) LSC will maintain an exhaustive list of applicable Federal laws relating to the proper use of Federal funds on its Web site and provide recipients with a link to the list in the contractual agreement. The list may be modified with the approval of the Corporation's Board of Directors at a public meeting. LSC will provide recipients with notice when the list is modified.

(b) For the purposes of this part and the laws referenced in paragraph (a) of this section, LSC is considered a Federal agency and a recipient's LSC funds are considered Federal funds provided by grant or contract.

§ 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written agreement with the Corporation that, with respect to its LSC funds, will subject the recipient to the applicable Federal laws relating to the proper use of Federal funds. The agreement must include a statement that all of the recipient's employees and board members have been informed of such Federal law and of the consequences of a violation of such law, both to the recipient and to themselves as individuals.

§ 1640.4 Violation of agreement.

(a) LSC will determine that a recipient has violated the agreement described in §1640.3 when the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of an applicable Federal law relating to the proper use of Federal funds with respect to its LSC grant or contract, by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired.

(b) A violation of the agreement by a recipient based on recipient conduct will result in the Corporation terminating the recipient's LSC grant or contract without need for a termination hearing. While an appeal of a conviction or judgment is pending, the Corporation may take any necessary steps to safeguard its funds.

(c) LSC will determine that the recipient has violated the agreement described in §1640.3 when an employee or board member of the recipient has been convicted of, or judgment has been entered against the employee or board member for, a violation of an applicable Federal law relating to the proper use of Federal funds with respect to the recipient's grant or contract with LSC, by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired, and the Corporation finds that the recipient has knowingly or through gross negligence allowed the employee or board member to engage in such activities.

(d) A violation of the agreement by the recipient based on employee or board member conduct will result in the Corporation terminating the recipient's LSC grant or contract. Prior to termination, the Corporation will provide notice and an opportunity to be

heard for the sole purpose of determining whether the recipient knowingly or through gross negligence allowed the employee or board member to engage in the activities leading to the conviction or judgment. While an appeal of a conviction or judgment or a hearing is pending, the Corporation may take any necessary steps to safeguard its funds.

PART 1641—DEBARMENT, SUSPENSION AND REMOVAL OF RECIPIENT AUDITORS

Subpart A—General

Sec.
1641.1 Purpose/Applicability.
1641.2 Definitions.
1641.3 Scope of debarment, suspension and removal.
1641.4 Duration of debarment, suspension and removal.

Subpart B—Debarment

1641.5 Debarment.
1641.6 Procedures for debarment.
1641.7 Causes for debarment.
1641.8 Notice of proposed debarment.
1641.9 Response to notice of proposed debarment.
1641.10 Additional proceedings as to disputed material facts.

Subpart C—Suspension

1641.11 Suspension.
1641.12 Procedures for suspension.
1641.13 Causes for suspension.
1641.14 Notice of proposed suspension.
1641.15 Response to notice of proposed suspension.

Subpart D—Removal

1641.16 Removal.
1641.17 Procedures for removal.
1641.18 Causes for removal.
1641.19 Notice of proposed removal.
1641.20 Response to notice of proposed removal.
1641.21 Additional proceedings as to disputed material facts.

Subpart E—Decisions

1641.22 Decisions of debarring official.
1641.23 Exceptions to debarment, suspension and removal.
1641.24 Appeal and reconsideration of debarring official decisions.

AUTHORITY: 42 U.S.C. 2996e(g); Pub. L. 105–277.

SOURCE: 64 FR 67507, Dec. 2, 1999, unless otherwise noted.

Subpart A—General

§ 1641.1 Purpose/Applicability.

In order to assist in ensuring that recipients receive acceptable audits, this part sets out the authority of the Legal Services Corporation (''LSC'') Office of Inspector General (''OIG'') to debar, suspend or remove independent public accountants (''IPAs'') from performing audit services for recipients. This rule informs IPAs of their rights to notice and an opportunity to be heard on actions involving debarment, suspension or removal, and the standards upon which such actions will be taken. This part applies to IPAs performing audit services for recipients, subrecipients or other entities which receive LSC funds and are required to have an audit performed in accordance with guidance promulgated by the OIG.

§ 1641.2 Definitions.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Audit services means the annual financial statement audit of a recipient, including an audit of the recipient's financial statements, systems of internal control, and compliance with laws and regulations.

Contract means an agreement between a recipient and an IPA for an IPA to provide audit services to the recipient.

Conviction means a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea, including but not limited to, pleas of *nolo contendere*.

Debarment means a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding by a preponderance of the evidence that any of the causes for debarment set out in §1641.7 exist. Debarment may cover an IPA's contracts with all recipients or with one or more specific recipients.

Debarring official is the official responsible for debarment, suspension or removal actions under this part. The

OIG legal counsel is the debarring official. In the absence of an OIG legal counsel or in the discretion of the Inspector General, the debarring official shall be the OIG staff person or other individual designated by the Inspector General.

Indictment means a charge by a grand jury that the person named therein has committed a criminal offense. An information, presentment, or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

IPA means an independent public accountant or firm of accountants.

Knowingly means that an act was done voluntarily and intentionally and not because of mistake or accident.

Material fact means one which is necessary to determine the outcome of an issue or case and without which the case could not be supported.

Person means an individual or a firm, partnership, corporation, association, or other legal entity.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Removal means a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract with one or more specific recipients based upon a finding by a preponderance of the evidence that any of the causes set out in §1641.18 exist.

Suspension means a decision by the debarring official, in anticipation of a debarment, to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding of adequate evidence that any of the causes referred to in §1641.13 exist. Suspension may preclude an IPA from soliciting or entering into new contracts with all recipients or with one or more specific recipients.

§1641.3 Scope of debarment, suspension and removal.

An IPA may be debarred, suspended or removed under this part only if the IPA is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(a) *Actions against individual IPAs.* Debarment, suspension or removal of an individual IPA, debars, suspends or removes that individual from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

(b) *Actions against IPA firms.* (1) Debarment, suspension or removal shall affect only those divisions or other organizational elements materially involved in the relevant engagement and as to which there is cause to debar, suspend or remove.

(2) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm only if such firm was materially involved in the relevant engagement and is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(3) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include an individual officer, director, or partner responsible for the engagement, or an individual employee, independent contractor, agent, representative or other individual associated with an IPA firm only if such individual is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

§1641.4 Duration of debarment, suspension and removal.

A debarment, suspension or removal is effective as set out in the debarring official's decision to debar, suspend or remove, issued pursuant to §1641.22.

(a) *Debarment.* (1) Debarment generally should not exceed three years, but may be for a shorter period based on a consideration of the evidence presented by the IPA. Debarment may exceed three years in extraordinary circumstances.

(2) If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(3) The debarring official may extend an existing debarment for an additional period if the debarring official determines, based on additional facts not previously in the record, that an extension is necessary to protect LSC funds. The standards and procedures in this part shall be applied in any proceeding to extend a debarment.

(b) *Suspension.* (1) The debarring official may determine that a cause for suspension exists, but that an investigation or other legal or debarment proceeding should be completed before proceeding to a debarment. Suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceedings, including a proceeding conducted by the OIG, a law enforcement or other government agency, an investigative or audit official from another OIG, a court, or a state licensing body or other organization with authority over IPAs.

(2) If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an official or organization conducting a proceeding referred to in paragraph (b)(1) of this section requests its extension in writing. In such cases, the suspension may be extended up to an additional six months. In no event may a suspension be imposed for more than 18 months, unless debarment proceedings have been initiated within that period.

(3) The OIG shall notify the appropriate official or organization conducting a proceeding referred to in paragraph (b)(1) of this section, if any, of the suspension within 10 days of its implementation, and shall notify such official or organization of an impending termination of a suspension at least 30 days before the 12-month period expires to allow an opportunity to request an extension.

(4) The limit on the duration of a suspension in paragraph (b)(2) of this section may be waived by the affected IPA.

(c) *Removal.* Removal shall be effective for the years remaining on the existing contract(s) between the IPA and the recipient(s).

Subpart B—Debarment

§ 1641.5 Debarment.

(a) IPAs debarred from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the specified period of debarment. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs debarred from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of debarment as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the debarment to any recipient for which the IPA provides audit services.

§ 1641.6 Procedures for debarment.

Before debarring an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.7 through 1641.9. Such hearing shall be held entirely by written submissions, except:

(a) Additional proceedings shall be held under § 1641.10 if the debarring official finds there is a genuine dispute of material fact; and/or

(b) A meeting may be held under § 1641.9(c).

§ 1641.7 Causes for debarment.

The debarring official may debar an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.8 Notice of proposed debarment.

(a) Before debarring an IPA, the OIG shall send the IPA written notice of the proposed debarment. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that debarment is being considered;

(2) Identify the reasons for the proposed debarment sufficient to put the IPA on notice of the conduct or transaction(s) upon which a debarment proceeding is based;

(3) Identify the regulatory provisions governing the debarment proceeding; and

(4) State that debarment may be for a period of up to three years or longer under extraordinary circumstances. If the OIG has determined that extraordinary circumstances warranting debarment in excess of three years may exist, the notice shall so state.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.9.

§ 1641.9 Response to notice of proposed debarment.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed debarment, including any additional specific information pertaining to the possible causes for debarment, and information and argument in mitigation of the proposed period of debarment.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for debarment set forth in the notice and an acceptance of the period of debarment. In such circumstances, without further proceedings, the debarring official may enter a final decision stating the period of debarment.

§ 1641.10 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.7 (d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.9(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart C—Suspension

§ 1641.11 Suspension.

(a) IPAs suspended from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the suspension. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs suspended from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of suspension as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Suspended IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Suspended IPAs also must provide prior written notice of the suspension to any recipient for which the IPA provides audit services.

§ 1641.12 Procedures for suspension.

Before suspending an IPA, the OIG shall provide the IPA with a show cause hearing in accordance with the procedures set out in §§ 1641.13 through 1641.15. Such hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.15(c).

§ 1641.13 Causes for suspension.

The debarring official may suspend an IPA in accordance with the procedures set forth in this part upon adequate evidence that:

(a) A cause for debarment under § 1641.7 may exist;

(b) The IPA has been indicted for or convicted of any offense described in § 1641.7;

(c) The IPA has been found subject to a civil judgment described in § 1641.7(e), whether the judgment is final or not.

(d) The IPA has been suspended from contracting with a Federal agency or entity receiving Federal funds including when the IPA has stipulated to the suspension.

§ 1641.14 Notice of proposed suspension.

(a) Before suspending an IPA, OIG shall send it written notice of cause to suspend. Such notice shall:

(1) Include a directive to show cause, signed by the debarring official, which shall inform the IPA that unless the IPA responds within 10 days as provided in § 1641.15, a suspension will be imposed;

(2) Identify the reasons for the proposed suspension sufficient to put the IPA on notice of the conduct or transaction(s) upon which a suspension proceeding is based;

(3) Identify the regulatory provisions governing the suspension proceeding; and

(4) State that, if imposed, the suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceeding.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, who may comment on the proposed action in the time frame set out in § 1641.15.

§ 1641.15 Response to notice of proposed suspension.

(a) The IPA shall have 10 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed suspension, including any additional specific information pertaining to the possible causes for suspension, and information and argument in mitigation of the proposed period of suspension.

(c) The response may request a meeting with the OIG official identified in the notice to permit the IPA to discuss issues of fact or law relating to the proposed suspension, or to otherwise resolve the pending matters.

(1) Any such meeting shall take such form as the debarring official deems appropriate and shall be held within 10 days of the response.

(2) No meeting will be held if a law enforcement official, an investigative or audit official from another OIG, a state licensing body or other organization with authority over IPAs, or a governmental agency has advised in writing that the substantial interest of a governmental unit would be prejudiced by such a meeting and the debarring official determines that the suspension is based on the same facts as the pending legal proceedings referenced by the law enforcement official.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension set forth in the notice and an acceptance of the period of suspension. In such circumstances, the OIG may proceed to a final decision without further proceedings.

Subpart D—Removal

§ 1641.16 Removal.

Removed IPAs are prohibited from performing audit services in subsequent years under an existing contract(s) with one or more specific recipients. The affected recipient(s) shall not extend existing contracts with such IPAs. Removed IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Removed IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Procedures for removal.

(a) Before removing an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.18 through 1641.21. Such hearing shall be held entirely by written submissions, except:

(1) Additional proceedings shall be held under § 1641.21 if the debarring official finds there is a genuine dispute of material fact; and/or

(2) A meeting may be held under § 1641.20(c).

(b) A Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and the proceedings may be consolidated.

§ 1641.18 Causes for removal.

The debarring official may remove an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.19 Notice of proposed removal.

(a) Before removing an IPA, the OIG shall send the IPA written notice of the proposed removal. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that removal is being considered;

(2) Identify the reasons for the proposed removal sufficient to put the IPA on notice of the conduct or transaction(s) upon which a removal proceeding is based;

(3) Identify the regulatory provisions governing the removal proceeding; and

(4) State that removal shall be for the years remaining on the existing contract(s) between the IPA and the recipient(s).

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.20.

§ 1641.20 Response to notice of proposed removal.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed removal, including any additional specific information pertaining to the possible causes for removal.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed removal, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for removal set forth in the notice and an acceptance of the removal. In such circumstances, without further proceedings, the debarring official may enter a final decision removing the IPA.

§ 1641.21 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.18(d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.20(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart E—Decisions

§ 1641.22 Decisions of debarring official.

(a) *Standard of proof.* (1) A debarment or removal must be based on a finding that the cause or causes for debarment or removal are established by a preponderance of the evidence in the administrative record of the case.

(2) A suspension must be based on a finding that the cause or causes are established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of any information, reports, documents or other evidence identified and relied upon in the Notice of Proposed Debarment, the Notice of Proposed Suspension, or the Notice of Proposed Removal, together with any relevant

material contained in the IPA's response or submitted by an affected recipient. In the case of debarment or removal, when additional proceedings are necessary to determine disputed material facts, the administrative record also shall consist of any relevant material submitted or presented at such proceedings.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarring, suspending or removing an IPA. In extraordinary circumstances, the OIG may grant an IPA an extension of the time requirements set out in this part.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarring official's decision. A copy of the decision also will be sent to the affected recipient. If the debarring official debars, suspends or removes an IPA, the decision shall:

(1) Set forth the finding(s) upon which the decision is based;

(2) Set forth the effect of the debarment, suspension or removal action and the effective dates of the action;

(3) Refer the IPA to its procedural rights of appeal and reconsideration under §1641.24; and

(4) Inform the IPA that a copy of the debarring official's decision will be a public document and the fact of debarment, suspension or removal will be a matter of public record.

(e) If the debarring official decides that a debarment, suspension, or removal is not warranted, the Notice may be withdrawn or the proceeding may be otherwise terminated.

(f) If the debarring official deems it appropriate, the debarring official may, at any time, settle by agreement with the IPA a debarment, suspension, or removal action. Such a negotiated settlement may include the imposition of appropriate conditions on the IPA.

§1641.23 Exceptions to debarment, suspension and removal.

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, when there are compelling reasons to use a particular IPA for a specific task. Requests for such exceptions may be submitted only by the recipient requiring audit services. The Inspector General may except a contract from the effects of debarment, suspension or removal upon a written determination that a compelling reason exists for using the IPA in the particular instance.

§1641.24 Appeal and reconsideration of debarring official decisions.

(a) *Appeal and reconsideration generally.* A debarred, suspended or removed IPA may submit the debarring official's decision for appeal or reconsideration in accordance with this section. Within 60 days, IPAs shall be given notice of decisions on appeal and reconsideration. The relief, if any, granted upon appeal or reconsideration shall be limited to the relief stated in the decision on the appeal or reconsideration.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarring official's decision.

(2) The appeal shall be filed in writing:

(i) By a debarred or removed IPA, within 30 days of receipt of the decision;

(ii) By a suspended IPA, within 15 days of receipt of the decision.

(3) The Inspector General, at his or her discretion and after determining that a compelling reason exists, may stay the effect of the debarment, suspension or removal pending conclusion of his or her review of the matter.

(c) *Reconsideration.* (1) A debarred, suspended or removed IPA may submit a request to the debarring official to reconsider the debarment, suspension or removal decision, reduce the period of debarment or removal, or terminate the suspension.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) In the case of suspension, reversal of the conviction or civil judgment upon which the suspension was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the debarment, suspension or removal was imposed; or

(v) Other reasons the debarring official deems appropriate.

(3) A request for reconsideration of a suspension which was based a conviction, civil judgment, or sanction that has been reversed may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the debarring official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

(5) The debarring official's decision on a request for reconsideration is subject to the appeal procedure set forth in paragraph (b) of this section.

PART 1642 [RESERVED]

PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.

1643.1 Purpose.
1643.2 Definitions.
1643.3 Prohibition.
1643.4 Applicability.
1643.5 Recipient policies and recordkeeping.

AUTHORITY: Pub. L. 105–12; 42 U.S.C. 2996f(b)(11).

SOURCE: 62 FR 67749, Dec. 30, 1997, unless otherwise noted.

§ 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

§ 1643.2 Definitions.

(a) *Assisted suicide* means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) *Euthanasia (or mercy killing)* is the use of active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) *Suicide* means the act or instance of taking one's own life voluntarily and intentionally.

§ 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

§ 1643.4 Applicability.

(a) Nothing in § 1643.3 shall be interpreted to apply to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion;

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or

(5) The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall § 1643.3 be interpreted as limiting or interfering with the operation of any other statute or regulation governing the activities listed in this paragraph.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

§ 1643.5 Recipient policies and recordkeeping.

The recipient shall adopt written policies to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.
1644.1 Purpose.
1644.2 Definitions.
1644.3 Applicability.
1644.4 Case disclosure requirement.
1644.5 Recipient policies and procedures.

AUTHORITY: Pub. L. 105–119, 111 Stat. 2440, Sec. 505; Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

SOURCE: 63 FR 33254, June 18, 1994, unless otherwise noted.

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type r principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

PARTS 1645–1699 [RESERVED]

CHAPTER XVII—NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

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PART 1700—ORGANIZATION AND FUNCTIONS

Sec.
1700.1 Purpose.
1700.2 Functions.
1700.3 Membership.
1700.4 Chairperson.
1700.5 Executive Director.

AUTHORITY: 5 U.S.C. 552; 20 U.S.C. 1501 *et seq.*

SOURCE: 63 FR 51533, Sept. 28, 1998, unless otherwise noted.

§ 1700.1 Purpose.

The National Commission on Libraries and Information Science (NCLIS):

(a) Advises the President and the Congress on library and information services adequate to meet the needs of the people of the United States;

(b) Advises Federal, State, and local governments, and other public and private organizations regarding library services and information science, including consultations on relevant treaties, international agreements, and implementing legislation; and

(c) Promotes research and development activities to extend and improve the nation's library and information handling capabilities as essential links in national and international networks.

§ 1700.2 Functions.

The Commission's functions include the following:

(a) Developing and recommending overall plans for library and information services adequate to meet the needs of the people of the United States;

(b) Coordinating, at the Federal, State and local levels, implementation of the plans referred to in paragraph (a) of this section and related activities;

(c) Conducting studies, surveys and analyses of, and hearings on, the library and informational needs of the Nation, including the special needs of rural areas, economically, socially or culturally deprived persons and the elderly;

(d) Evaluating the means by which the needs referred to in paragraph (c) of this section may be met through the establishment or improvement of information centers and libraries;

(e) Appraising the adequacies and deficiencies of current library and information resources and services; and

(f) Evaluating current library and information science programs.

§ 1700.3 Membership.

(a) The Commission is composed of the Librarian of Congress, the Director of the Institute of Museum and Library Services (who serves as an ex officio, nonvoting member), and 14 members appointed by the President, by and with the advice and consent of the Senate.

(b) The President designates one of the members of the Commission as the Chairperson.

§ 1700.4 Chairperson.

(a) To facilitate its work, the Commission from time to time delegates to the Chairperson various duties and responsibilities.

(b) The Commission records formal delegation of the duties and responsibilities referred to in paragraph (a) of this section in resolutions and in the minutes of its meetings.

(c) The Chairperson may delegate the duties and responsibilities referred to in paragraph (a) of this section, as necessary, to other Commissioners or the Executive Director of the Commission.

§ 1700.5 Executive Director.

(a) The Executive Director serves as the administrative and technical head of the Commission staff, directly responsible for managing its day-to-day operations and assuring that Commission operations conform to all applicable Federal laws.

(b) The Executive Director is directly responsible to the Commission, works under the general direction of the Chairperson, and assists the Chairperson in carrying out the Commission's organizational and administrative responsibilities.

(c) The Executive Director acts as the principal staff advisor to the Chairperson and Commissioners, participating with the Commissioners in the development, recommendation and implementation of overall plans and policies to achieve the Commission's goals.

(d) To facilitate its work, the Commission from time to time delegates to

the Executive Director various duties and responsibilities.

(e) The Commission records formal delegation of the duties and responsibilities referred to in paragraph (d) of this section in resolutions and in the minutes of its meetings.

(f) The Executive Director may delegate the duties and responsibilities referred to in paragraph (d) of this section, as necessary, to other members of the Commission staff.

PART 1701—DISCLOSURE OF INFORMATION

Sec.

1701.1 Statement of policy.
1701.2 Disclosure of records and informational materials.
1701.3 Requests.
1701.4 Fees.
1701.5 Prompt response.
1701.6 Form of denial.
1701.7 Appeals.

AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1501 *et seq.*

§ 1701.1 Statement of policy.

The records of the National Commission on Libraries and Information Science shall be available to the fullest extent possible consistent with the terms and policies of 5 U.S.C. section 552 and on request will be promptly furnished to any member of the public.

[39 FR 39879, Nov. 4, 1974]

§ 1701.2 Disclosure of records and informational materials.

(a) With the exception of records and materials exempt from disclosure pursuant to paragraph (b) of this section, any person in accordance with the procedure provided in §1701.3 may inspect and copy any document of the National Commission on Libraries and Information Science.

(b) The provisions of 5 U.S.C. section 552 which require that agencies make their records available for public inspection and copying do not apply to Commission records which are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and information which is privileged or which relates to the business, personal or financial affairs of any person and which is furnished in confidence;

(5) Inter-agency and intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission;

(6) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated by the Commission since its creation on July 20, 1970, and required by section 552(a)(2) of title 5 to be made available or published. However, in accordance with 5 U.S.C. 552(a)(4)(A) the Commission deems that publication of the index or supplements

thereto would be unnecessary and impracticable. Accordingly, it shall provide copies of such index on request but shall not publish and distribute it quarterly or more frequently.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.3 Requests.

(a) A member of the public may request records from the National Commission on Libraries and Information Science by writing to the Associate Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street, NW, Washington, DC 20036.

(b) A request for access to records should reasonably describe the records requested such that Commission personnel will be able to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester.

(c) Records or materials will be available for inspection and copying at the offices of the Commission during the normal business hours of regular business days or they may be obtained by mail.

[39 FR 39879, Nov. 12, 1974, as amended at 40 FR 7652, Feb. 21, 1975]

§ 1701.4 Fees.

(a) A fee may be charged for direct costs of document search and duplication at the rate of $0.10 per page for copying and $5.00 per hour for time expended in identifying and locating records.

(b) A fee may be waived in whole or in part where it is determined that it is in the public interest because furnishing the information can be considered as primarily benefiting the general public or where other circumstances indicate that a waiver is appropriate.

(c) The Commission may limit the number of copies of any document provided to any person.

[40 FR 7653, Feb. 21, 1975]

§ 1701.5 Prompt response.

(a) Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the Associate Director shall determine whether to comply with or deny such request and shall dispatch such determination to the requester, unless an extension is made under paragraph (c) of this section.

(b) Only the Associate Director may deny a request and is the ''person responsible for the denial'' within the meaning of 5 U.S.C. 552(a). When a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a ''person responsible for the denial'' if he is so advised before the Associate Director informs the requester that his request is denied.

(c) In unusual circumstances as specified in this paragraph, the Associate Director may extend the time for the initial determination of a request up to a total of ten days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be dispatched. As used in this paragraph ''unusual circumstances'' means, but only to the extent necessary to the proper processing of the request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1701.7. When no determination can be dispatched within the applicable time limit, the Associate Director shall nevertheless continue to

process the request. On expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his rights to treat the delay as a denial and appeal to the Executive Director in accordance with §1701.7. He may also ask the requester to forgo appeal until a determination is made.

[40 FR 7653, Feb. 21, 1975]

§1701.6 Form of denial.

A reply denying a request shall be in writing, signed by the Associate Director, and shall include: (a) A specific reference to the exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, (b) brief explanation of how the exemption(s) applies to the record(s) withheld, (c) a statement that the denial may be appealed under §1701.7 within thirty days by writing to the Executive Director, National Commission on Libraries and Information Science, Suite 601, 1717 K Street NW., Washington, DC 20036, and (d) that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or in the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

§1701.7 Appeals.

(a) When the Associate Director has denied a request for records in whole or in part, the requester may, within thirty days of receipt of the letter notifying him of the denial, appeal to the Commission. Appeals to the Commission shall be in writing, addressed to the Executive Director, National Commission on Libraries and Information Science, 1717 K Street NW., Washington, DC 20036.

(b) The Commission will act upon an appeal within twenty days (excepting Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to §1701.5(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph ''unusual circumstances'' means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request.

(d) If no determination of the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the records are situated, or the District of Columbia. The requester may be asked to forgo judicial review until determination of the appeal.

(e) The Commission's determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include: (1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record,

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia.

[40 FR 7653, Feb. 21, 1975]

PART 1703—GOVERNMENT IN THE SUNSHINE ACT

Subpart A—General Provisions

Sec.

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13553, Mar. 11, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 1703.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decision-making processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission action, and inform the public of which meetings they are entitled to observe.

§ 1703.102 Definitions.

In this part:

(a) *Meeting* means the deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate where such deliberations determine or result in the joint conduct of official Commission business.

(b) *Member* means one of the Commissioners of the National Commission on Libraries and Information Science (NCLIS) who is appointed to that position by the President with the advice and consent of the Senate.

§ 1703.103 Applicability and scope.

This part applies to deliberations of a majority of the Commission members who have been appointed by the President and confirmed by the Senate. Excluded from coverage of this part are deliberations of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members; individual member's consideration of official agency business circulated to the members in writing for disposition or notation; and deliberations by the agency in determining whether or not to close a portion or portions of a meeting or series of meetings as provided in § 1703.202.

§ 1703.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business

are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in §1703.202.

Subpart B—Procedures Governing Decisions About Meetings

§1703.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§1703.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of this title). Provided that such statute: (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except this subparagraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or

international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of §1703.202(a), if it would be in the public interest to do so. The Commission will determine whether the discussion comes within one of the specific exemptions. If the discussion is determined to be exempt, the Commission will consider and determine whether the public interest nevertheless requires that the meeting be open.

§1703.203 Decision to close meeting.

(a) Commission members may decide before the meeting to close to public observation a meeting or portion or portions thereof, or to withhold information pertaining to such meeting, only if a majority of the members vote on the record to take such action. No proxy votes on this action shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the Chairman of NCLIS shall certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the Chairman shall state each relevant exemptive provision as set forth in §1703.202(a). A copy of the Chairman's certification, together with a statement from the Chairman setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in §1703.202 (a) (5), (6), or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§1703.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§1703.205 Public announcement of meeting.

(a) Except as provided in §§1703.207 and 1703.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting was closed to protect, the subject matter shall not be announced.

§ 1703.206 Providing information to the public.

Individuals or organizations interested in obtaining copies of information available in accordance with §1703.204 may request same under provisions set forth in §§1703.402 and 1704.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Director to the Commissioners to place them on a mailing list for receipt of information available under §1703.205. The Commission shall provide information to publications whose readers are likely to have a special interest in the work of the Commission.

§ 1703.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

§ 1703.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 1703.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 1703.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, every reasonable effort will be made to provide alternative facilities.

§ 1703.302 Role of observers.

The public may attend open meetings for the sole purpose of observation and may not record any of the discussions by means of electronic or other devices or cameras unless approved in advance by the Executive Committee of the Commission. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. Such participation or attempted participation shall be cause for removal of any person so engaged at the discretion of the presiding member of the Commission. When meetings are partially closed, observers will leave the meeting room promptly upon request so that discussion, of matters exempt under provisions of subpart B of this part, §1703.202, may take place expeditiously.

Subpart D—Maintenance of Meeting Records

§ 1703.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a transcript or electronic recording.

(b) When minutes are produced, such minutes shall fully and clearly describe all matters discussed, and will provide a full and accurate summary of any actions taken and the reasons expressed

therefor. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of paragraph (b) of this section shall be retained by the agency as part of the minutes of the meeting:

(1) Certification by the Chairman that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time and place of the meeting and listing the persons present.

§ 1703.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of §1703.202(a) of this report. Copies of such minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt part of the minutes shall be in the official custody of the Executive Director of the Commission. Appropriate facilities will be made available to any persons who make a request to review these records.

(c) Requests for copies of nonexempt parts of minutes, shall be directed to the Executive Director of the Commission. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 1703.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than the minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 1703.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the National Commission on Libraries and Information Science.

(b) The Executive Director of the Commission has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 1703.501 Administrative Review.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Director to the Commissioners. Wherever possible, the Executive Director will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 1703.601 Judicial review.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within sixty days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within sixty days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

PART 1705—PRIVACY REGULATIONS

Sec.

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1705.4 Times, places, and requirements for identification of individuals making requests.
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1705.12 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 43 FR 47195, Oct. 13, 1978, unless otherwise noted.

§ 1705.1 Purpose and scope.

These procedures provide the means by which individuals may safeguard their privacy by obtaining access to, and requesting amendments or corrections in, information, if any, about these individuals which is contained in the White House Conference Delegate/Alternate Certification File (D/AC File), which is under the control of the National Commission on Libraries and Information Science (hereafter, the Commission).

§ 1705.2 Definitions.

For the purpose of these procedures:

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use or disseminate;

(c) The term *record* means any item or set of items about an individual that is maintained by the Commission in either hard copy or computerized form, including name, residence and other information obtained from the form, ''Certification of State/Territorial Delegates/Alternates to the White House Conference on Library and Information Services.''

(d) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1705.3 Procedures for requests pertaining to individual records in the D/AC File.

(a) An individual who wishes to know whether the D/AC File contains a record pertaining to him or her shall submit a written request to that effect to the System Manager at the Commission. The System Manager shall, within 10 days of receipt of such submission, inform the individual whether the D/AC File contains such a record.

(b) An individual who desires access to any identified record shall file a request therefor addressed to the System Manager indicating whether such individual intends to appear in person at the Commission's offices or whether he or she desires to receive a copy of any identified record through the mail.

§ 1705.4 Times, places, and requirements for identification of individuals making requests.

(a) An individual who, in accord with §1705.3(b) indicated that he or she would appear personally shall do so at the Commission's offices, 1717 K Street NW., Suite 601, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Monday through Friday (legal holidays excluded) and present either: (1) The response from the System Manager indicating that such a record exists; or

(2) A copy of the executed certification form, as well as another suitable form of identification, such as a valid drivers license or equivalent.

(b) In response to a request for mail delivery, the Commission will mail only to the home address appearing in the D/AC File a copy of the record for that individual within 10 working days.

§ 1705.5 Disclosure of requested information to individuals.

Upon verification of identity, the System Manager shall disclose to the individual: (a) The information contained in the record which pertains to that individual; and (b) the accounting

of disclosures of the record, if any, required by 5 U.S.C. 552a(c).

§ 1705.6 Request for correction or amendment to the record.

If a person wishes a change to be made in the record, he or she should follow the procedures for making changes which are included in the instructions accompanying the certification form by which the information was obtained. Copies of these instructions will be mailed to any delegate/alternate upon request.

§ 1705.7 Agency review of request for correction or amendment of the record.

Within 10 days of the receipt of the request to correct or to amend the record, the System Manager will acknowledge in writing such receipt and promptly either: (a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete and inform the individual of same: or

(b) Inform the individual of his or her refusal to correct or amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 1705.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the System Manager to correct or to amend his or her record may submit a request for review of such refusal to the Chairman of the Commission, 1717 K Street NW., Suite 601, Washington, DC 20036. The Chairman will, not later than 30 days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such 30-day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1705.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 1705.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual) the Commission will charge a fee of $0.25 per page (maximum per page dimension of 8½ by 13 inches) to the extent that the request exceeds $5 in cost to the Commission. Requests not exceeding $5 in cost to the Commission will be met without cost to the requester.

§ 1705.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than 5 years or both to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

§ 1705.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sec.

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1706.171–1706.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4578, 4579, Feb. 5, 1986, unless otherwise noted.

§ 1706.101 Purpose.

This part effectuates 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.

§ 1706.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1706.103 Definitions.

For purposes of this part, the term—

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, telecommunications devices 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. 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.

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.

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 of 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 addition and alcholism.

(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 limits major life activities only as a result of the attitudes of others toward such impairment; or

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

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person 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; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1706.140.

Section 504 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), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 1706.104–1706.109 [Reserved]

§ 1706.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, 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 handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

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

(2) A description of any modifications made.

§ 1706.111 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 and this regulation.

§§ 1706.112–1706.129 [Reserved]

§ 1706.130 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 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 handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied 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) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) 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) The agency may not deny a qualified handicapped person 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—

(i) Subject qualified handicapped persons 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 handicapped persons.

(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 handicapped persons 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 handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons 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 handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons 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 handicapped persons.

§§ 1706.131–1706.139 [Reserved]

§ 1706.140 Employment.

No qualified handicapped person 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.

§§ 1706.141–1706.148 [Reserved]

§ 1706.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1706.150, no qualified handicapped person shall, because the agency'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 conducted by the agency.

§ 1706.150 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 handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; 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 § 1706.150(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 reaching 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 handicapped persons 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 handicapped persons. The agency is nor 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 handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, 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, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, 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 handicapped persons;

(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 official responsible for implementation of the plan.

[51 FR 4578, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 1706.151 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 handicapped persons. 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.

§§ 1706.152–1706.159 [Reserved]

§ 1706.160 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 a handicapped person 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 is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(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.

(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 signage 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 used at each primary entrance of an 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 § 1706.160 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 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, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1706.161–1706.169 [Reserved]

§ 1706.170 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 or 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) The Deputy Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Deputy Director, National Commission on Libraries and Information Science, Suite 3122, GSA-ROB 3, Washington, DC 20024.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1706.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4578, 4579, Feb. 5, 1986, as amended at 51 FR 4578, Feb. 5, 1986]

§§ 1706.171–1706.999 [Reserved]

PARTS 1707–1799 [RESERVED]

CHAPTER XVIII—HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

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PART 1800—PRIVACY ACT OF 1974

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AUTHORITY: 5 U.S.C. 552a; Pub. L. 93–579.

SOURCE: 41 FR 52677, Dec. 1, 1976, unless otherwise noted.

§ 1800.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Harry S. Truman Scholarship Foundation (hereafter known as the Foundation) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1800.2 Definitions.

For the purpose of these regulations—

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use or disseminate;

(c) The term *record* means any item, collection or grouping of information about an individual that is maintained by the Foundation, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term *system of records* means a group of any records under the control of the Foundation from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term *routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1800.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Deputy Executive Secretary of the Foundation to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to review his or her record.

§ 1800.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Deputy Executive Secretary of the Foundation pursuant to §1800.3 shall present the request at the Foundation offices, 712 Jackson Place, NW., Washington, DC 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Foundation's offices with a form of identification which will permit the Foundation to verify that the individual is the same individual as contained in the record requested.

§ 1800.5 Access to requested information to the individual.

Upon verification of identity the Foundation shall disclose to the individual the information contained in the record which pertains to that individual.

§ 1800.6 Request for correction or amendment to the record.

The individual should submit a request to the Deputy Executive Secretary of the Foundation which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 1800.4.

§ 1800.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Deputy Executive Secretary of the Foundation will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Foundation for the individual to request a review of that refusal.

§ 1800.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Deputy Executive Secretary of the Foundation to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006. The Executive Secretary will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Secretary extends such thirty day period. If, after his or her review, the Executive Secretary also refuses to correct or to amend the record in accordance with the request, the individual may file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal of the Foundation and may seek judicial review of the Executive Secretary's determination under 5 U.S.C. 552a(g)(1)(A).

§ 1800.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Foundation will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a ''routine use'' in the Foundation's notices of its systems of records.

§ 1800.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

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AUTHORITY: Pub. L. 93–642, 88 Stat. 2276 (20 U.S.C. 2001–2012).

SOURCE: 65 FR 81405, Dec. 26, 2000, unless otherwise noted.

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from qualified applicants from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets minimum eligibility criteria as established by the Foundation. These minimum eligibility criteria are stated in §§ 1801.3, 1801.21 and 1801.23.

(b) As used in this part, *State* means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands (The Islands).

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated for a Truman Scholarship if he or she:

(a) Is a junior-level student pursuing a bachelor's degree as a full-time student at an accredited institution of higher education and will receive a baccalaureate degree the following academic year; or, is a full-time senior level student from the Commonwealth of Puerto Rico or from The Islands;

(b) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(c) Ranks in the upper quarter of his or her class; and

(d) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

Academic year means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

Foundation means the Harry S. Truman Scholarship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at his or her institution.

Graduate study means the courses of study beyond the baccalaureate level which lead to an advanced degree.

Institution means an institution of higher education. ''Institution of higher education'' has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141 (a)).

Junior means a student who, following completion of the current academic year, has one more year of full-time course work to receive a baccalaureate degree.

President means the principal official responsible for the overall direction of the operations of an institution.

Public service means employment in: government at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, public and private schools, and public service oriented non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

Resident means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, family's place of residence, home address listed for school registration, and eligibility for ''in-State'' tuition rates at public institutions of higher education.

Scholar means a person who has been selected by the Foundation as a Truman Scholar, has accepted the Scholarship and agreed to the conditions of the award, and is eligible for Scholarship stipend(s).

Senior means a student who is in his or her last year of study before receiving a baccalaureate degree.

Term means the period which the institution uses to divide its academic year: semester, trimester, or quarter.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.11 (b), 1801.12, and 1801.24, each institution may nominate up to four students annually. Additionally, a four-year institution may nominate up to three currently enrolled juniors who completed their first two college years at a two-year institution. Nominees may have legal residence in the same State as the institution or in different States.

(b) The Foundation may announce each year in its Bulletin of Information or on its website (*http://www.truman.gov*) special circumstances under which an institution may nominate additional candidates.

(c) All nominations must be made by the President of the institution or the designated Faculty Representative.

§ 1801.12 Institutions with more than one campus.

If an institution has more than one component separately listed in the current edition of the Directory of Postsecondary Institutions published by the U.S. Department of Education, each component will be considered to be a separate institution under this regulation, and each may nominate up to four students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution does not offer education beyond the sophomore level, the institution may nominate only students who have completed two years at that institution and who are currently enrolled as full-time juniors at accredited four-year institutions. Faculty Representatives at two-year institutions may submit the materials directly to the Foundation or they may forward the nomination materials to the Faculty Representative of the four-year institution attended by the nominee.

§ 1801.14 Faculty Representative.

(a) Each institution which nominates a student must give the Foundation the name, business address, and business telephone number of a member of the faculty or administrator who will serve as liaison between the institution and the Foundation.

(b) The Faculty Representative is responsible for a timely submission of all nominations and supporting documentation.

(c) The Foundation delegates the responsibility to the Faculty Representative to establish a process to publicize the scholarship, recruit candidates, select nominees, and assist nominees.

§ 1801.15 Submission of application to the Foundation.

To nominate a student for the competition, the Faculty Representative must submit the completed nomination packet to the Foundation as provided in § 1801.16. The Foundation does not accept nominations packets directly from students.

§ 1801.16 Closing date for receipt of nominations.

The Foundation announces in its Bulletin of Information and in the FEDERAL REGISTER and posts on its website (*http://www.truman.gov*) the date and address at which the Foundation must receive nominations. Nominations not received by this date at the address specified will not be considered.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A certification of nomination and eligibility signed by the Faculty Representative;

(2) A completed Truman Scholarship Application signed by the nominee;

(3) A policy proposal written by the nominee;

(4) A current official college transcript; and

(5) A letter of nomination from the Faculty Representative and three letters of recommendation.

§ 1801.18 Limitations on nominations.

A candidate nominated by an institution and not selected as a Truman Scholar may not be renominated the following year.

Subpart C—The Competition

§ 1801.20 Selection of Finalists.

The Foundation selects Finalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation appoints a committee to select finalists from the students nominated on the basis of the following criteria:

(1) Extent and quality of community service and government involvement;

(2) Leadership record;

(3) Academic performance and writing and analytical skills; and

(4) Suitability of the nominee's proposed program of study and its appropriateness for a leadership career in public service.

(b) The Foundation selects Finalists solely on the basis of the information required under § 1801.17.

§ 1801.22 Interview of Finalists with panel.

The Foundation invites each Finalist to an interview with a regional review panel. Panels evaluate Truman Finalists primarily on:

(a) Leadership potential and communication skills;

(b) Likelihood of ''making a difference'' in public service; and

(c) Intellectual strength, analytical abilities, and prospects of performing well in graduate school.

§ 1801.23 Recommendation by panel.

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar. The Foundation may authorize each regional review panel to recommend additional Scholars from the States in its region.

(b) A panel's recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each Finalist in terms of criteria presented in § 1801.22.

(c) In the event that a regional review panel determines that none of the Finalists from a state meets all the requirements expected of a Truman Scholar, it does not provide a recommendation. The Foundation will carry over the Scholarship for that state making two Scholarships available the following year.

§ 1801.24 Selection of Truman Scholars by the Foundation.

The Foundation names Truman Scholars after receiving recommendations from the regional review panels.

Subpart D—Graduate Study

§ 1801.30 Continuation into graduate study.

(a) Only Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

(b) The Foundation does not conduct a competition for graduate scholarships and does not add new Truman Scholars at the graduate level.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) By December 1, Scholars desiring Foundation support for graduate study the following academic year must submit a proposed program of graduate study to the Foundation for approval. The graduate program proposed for approval may differ from that proposed by the Scholar when nominated for a Truman Scholarship. Factors to be used by the Foundation in considering approval include being consistent with:

(1) Field of study initially proposed in the Scholar's Application;

(2) Graduate school programs given priority in the current Bulletin of Information;

(3) Undergraduate educational program and work experience of the Scholar; and

(4) Preparation specifically for a career in public service.

(b) Foundation approval in writing of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in detail how their graduate program and their overall educational and work experience plans will realistically prepare them for their chosen career goal in government or elsewhere in public service.

(d) After completing his or her undergraduate studies, a Scholar each year may request in writing a deferral of support for graduate studies. Deferrals must be requested no later than June 15 for the succeeding academic year. Scholars failing to request a year's deferral and to receive written approval from the Foundation may lose one year of funding support for each year for which they fail to request and receive deferrals. Total deferrals may not exceed four years unless an extension is granted in writing by the Foundation.

§ 1801.32 Eligible institutions and degree programs.

(a) Truman Scholars at the graduate level may use Foundation support to study at any accredited college or university in the United States or abroad that offers graduate study appropriate and relevant to their public service career goals.

(b) They may enroll in any relevant graduate program for a career in public service.

(c) Foundation support for graduate study is restricted to three years of full-time study.

Subpart E—Payments to Finalists and Scholars

§ 1801.40 Travel expenses of finalists.

The Foundation will provide partial funding for intercity round-trip transportation from the finalist's nominating institution to the interview site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. The Foundation announces the terms and conditions of support on its website (*http://www.truman.gov*) and in the Bulletin of Information.

§ 1801.41 Scholarship stipends.

The Scholarship stipend may be used only for eligible expenses in the following categories: tuition, fees, books, and room and board. Payments from the Foundation may be received to supplement, but not to duplicate, benefits received by the Scholar from the educational institution or from other foundations or organizations. The designated benefits received from all sources combined may not exceed the costs of tuition, fees, books, and room and board as determined by the Foundation. The Foundation's Bulletin of Information, current at the time of the Scholar's selection, contains additional information about the terms and conditions of scholarship support.

§ 1801.42 Definition of "fee".

As used in this part, *fee* means a typical and usual non-refundable charge by the institution for a service, a privilege, or the use of property which is required for a Scholar's enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowance for a Scholar's books is $1000 per year, or such higher amount published on the Foundation's website (*http://www.truman.gov*).

§ 1801.44 Allowance for room and board.

The cost allowed for a Scholar's room and board is the amount the institution reports to the Foundation as the average cost of room and board for the Scholar's institution, given the type of housing the Scholar occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a Scholar's tuition, fees, books, room and board must be reduced to the extent that the cost is paid by another organization, or provided for or waived by the Scholar's institution.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Scholar must sign an acceptance of the scholarship and acknowledgement of the conditions of the award and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

(a) To receive a Scholarship stipend, a Scholar must submit a current transcript and Payment Request Form containing the following:

(1) A statement of the Scholar's costs for tuition, fees, books, room and board;

(2) A certification by an authorized official of the institution that the Scholar is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and is not engaged in gainful employment that interferes with the Scholar's studies; and

(3) A certification by an authorized official of the institution of whether the Scholar is in academic good standing.

(b) At the beginning of each academic year, the Scholar must have his or her institution submit a certified Educational Expense Form containing the following:

(1) A certification by an authorized official of the institution that the Scholar's statement of costs for tuition, fees, books, room and board and other expenses required for the academic year is accurate; and

(2) A certification of the amounts of those costs that are paid or waived by the institution or paid by another organization.

§ 1801.52 Payment schedule.

The Foundation will pay the Scholar a portion of the award of the Scholarship stipend (as described in the Foundation's Bulletin of Information) after each report submitted under § 1801.51.

§ 1801.53 Postponement of payment.

(a) A Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose conditions as it deems appropriate.

§ 1801.54 Annual report.

(a) Scholars with remaining eligibility for scholarship stipends must submit no later than July 15 an annual report to the Foundation.

(b) The annual report should be in narrative form and cover: courses taken and grades earned; courses planned for the coming year if Foundation support will be requested; public service and school activities; part-time or full-time employment and summer employment or internships; and achievements, awards and recognition, publications or significant developments.

(c) Newly selected Scholars are required to submit by the July 15 following their selection an annual report

updating the Foundation on their activities and accomplishments since the time they submitted their applications for the Truman Scholarship.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may suspend or terminate a scholarship under the following specific conditions:

(1) Unsatisfactory academic performance for two terms, failure to pursue preparation for a career in public service, or loss of interest in a career in public service;

(2) Failure to meet the criteria in §1801.3(d), §1801.30(a) §1801.31(a) and (b), or §1801.51;

(3) Failure to submit a report or request required by the Foundation or providing false, misleading, or materially incomplete information on any report, payment request or other submission to the Foundation; or

(4) Failure to begin use of the graduate portion of the scholarship within four years of the date of receipt of a baccalaureate degree unless granted an extension in writing by the Foundation.

(b) Before it terminates a scholarship, the Foundation will notify the Scholar of the proposed action and will provide an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

(a) When a Truman Scholarship is terminated for any reason, the Scholar must return to the Foundation any stipend funds which have not yet been spent or which the Scholar may recover.

(b) A Scholar who fails for any reason to complete, as a full-time student, a school term for which he or she has received a Foundation stipend, must return the amount of that stipend to the Foundation. The Foundation may waive this requirement upon application by the Scholar showing good cause for doing so.

§ 1801.63 Scholar Accountability.

(a) A Scholar selected after January 2005 must be employed in public service for three of the seven years following completion of his or her Foundation funded graduate education.

(b) Following completion of Foundation funded graduate education, Scholars must submit a report to the Foundation by July 15 of each year. This report will include the Scholar's current contact information as well as a brief description of his or her employment during the past twelve months. This reporting requirement ends when the Foundation determines that a Scholar has reported three years of public service employment and the Foundation notifies him or her that he or she no longer is required to submit reports. Scholars who fail for two consecutive years to submit the required report to the Foundation will be considered to have failed to complete the three year public service requirement of paragraph (a) of this section.

(c) A Scholar who fails to be employed in public service for three out of the first seven years following completion of his or her Foundation funded graduate education must repay to the Foundation an amount equal to:

(1) All of the Scholarship stipends received,

(2) Interest at the rate of 6% per annum from the date of receipt of each payment until repayment is made to the Foundation, and

(3) Reasonable collection fees.

(d)(1) The repayment obligation of paragraph (c) of this section accrues on the first July 15 on which it becomes impossible for a Scholar to fulfill the three year public service requirement of paragraph (a) of this section. For example, the repayment obligation would accrue on July 15 of the sixth year following completion of Foundation funded graduate education for a Scholar who has been employed in the public service for only one of those six years.

(2) The Foundation will send to the Scholar's last known address a notice that his or her repayment obligation has accrued. The failure, however, of the Foundation to send, or the Scholar to receive, such a notice does not alter or delay the Scholar's repayment obligation.

(e) The Foundation may employ whatever remedies are available to it to collect any unpaid obligation accruing under this §1801.63.

(f) Upon application by the Scholar showing good cause for doing so, the Foundation may waive or modify the repayment obligation established by paragraph (c) of this section.

(g) The Foundation will establish a process for appealing any disputes concerning the accrual of the repayment obligation imposed by paragraph (c) of this section. The Foundation will publish on its Web site *http://www.truman.gov* information about this appeals process and other information pertinent to repayment obligations accruing under this §1801.63.

[70 FR 36039, June 22, 2005]

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Sec.

1802.1 Purpose and scope.
1802.2 Definitions.
1802.3 Open meetings.
1802.4 Grounds on which meetings may be closed, or information may be withheld.
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1802.6 Procedure for closing meetings.
1802.7 Transcripts, recordings, minutes of meetings.

AUTHORITY: 5 U.S.C. 552b(g); 20 U.S.C. 2001–2012.

SOURCE: 42 FR 14722, Mar. 16, 1977, unless otherwise noted.

§1802.1 Purpose and scope.

The Harry S. Truman Scholarship Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and the Foundation's abilities to carry out its responsibilities. Accordingly, these procedures apply to meetings of the Board of Trustees, Harry S. Truman Scholarship Foundation, including committees of the Board of Trustees.

§1802.2 Definitions.

As used in this part:

Board or *Board of Trustees* means the collegial body that conducts the business of the Harry S. Truman Scholarship Foundation as specified in section 5(b), Pub. L. 93–642 (20 U.S.C. 2004), consisting of:

(a) Eight persons appointed by the President, by and with the advice and consent of the Senate;

(b) Two members of the Senate, one from each political party, appointed by the President of the Senate;

(c) Two members of the House of Representatives, one from each political party, appointed by the Speaker; and

(d) The Commissioner of Education or his designee, who serves as an ex officio member of the Board.

Chairman means the presiding officer of the Board.

Committee means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

Executive Secretary means the individual appointed by the Board to serve as the chief executive officer of the Foundation.

Meeting means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include: (1) Deliberations to open or close a meeting, to establish the agenda for a meeting, or to release or withhold information, required or permitted by §1802.5 or §1802.6, (2) notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram and (3) instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members

of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

Member means a member of the Board of Trustees.

Staff includes the employees of the Harry S. Truman Scholarship Foundation, other than the members of the Board.

§ 1802.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Trustees other than in accordance with these procedures. Every portion of every meeting of the Board of Trustees or any committees of the Board shall be open to public observation subject to the exceptions provided in §1802.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate. The use of cameras and disruptive recording devices will not be permitted.

§ 1802.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of §1802.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§1802.5 and 1802.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are: (1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the Harry S. Truman Scholarship Foundation;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code), provided that such statute: (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial and financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except that this paragraph shall not apply in any instance where the agency has already disclosed to the public the

content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or Foundation participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Foundation of a particular case of formal adjudication pursuant to the procedures in section 554 of title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 1802.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of §1802.4, in the case of each Board or committee meeting, the Executive Secretary, acting at the direction of the Board, shall publish in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) only if the Executive Secretary, acting at the direction of the Board, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) of this section only if: (1) A majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The ''earliest practicable time'' as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 1802.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in §1802.4, shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action. Any such action shall include a specific finding by the Board that an open meeting is not required by the public interest.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to §1802.4 or with

respect to any information which is proposed to be withheld under §1802.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in paragraph (e), (f), or (g) of §1802.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close the meeting.

(f) Within one day of any vote taken pursuant to paragraph (a), (b), (c) or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within one day of the vote taken pursuant to paragraph (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of §1802.4.

(g) For every meeting closed pursuant to §1802.4, the General Counsel of the Harry S. Truman Scholarship Foundation shall certify before the meeting may be closed that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by §1802.7.

§1802.7 Transcripts, recordings, minutes of meetings.

(a) The Board of Trustees shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting closed to the public pursuant to paragraph (j) of §1802.4, the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Foundation shall make available to the public, in the offices of the Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the General Counsel determines to contain information which may be withheld under §1802.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the General Counsel to withhold information pursuant to paragraph (d)(1) of this section may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within twenty days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

PART 1803—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.

1803.1 Purpose.
1803.2 Application.
1803.3 Definitions.
1803.4 Self-evaluation.
1803.5 Notice.
1803.6 General prohibitions against discrimination.
1803.7 Program accessibility: Existing facilities.
1803.8 Program accessibility: New construction and alterations.
1803.9 Employment.
1803.10 Communications.
1803.11 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 54 FR 4795, Jan. 31, 1989, unless otherwise noted.

§ 1803.1 Purpose.

This part effectuates 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.

§ 1803.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individual(s) with handicaps in the United States.

§ 1803.3 Definitions.

For purposes of this part, the term—

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 Foundation.

Complete complaint means a written statement containing: (1) Date and nature of the alleged violation of section 504; (2) the complainant's name and address; and (3) the signature of the complainant or of someone authorized to act 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.

Executive Secretary means the Executive Secretary of the Harry S. Truman Scholarship Foundation.

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.

Foundation means the Harry S. Truman Scholarship Foundation.

General Counsel means the General Counsel of the Harry S. Truman Scholarship Foundation.

Individual 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 classified 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 Foundation as constituting such a limitation;

(ii) 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

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

Qualified individual with handicaps means an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, any Foundation program or activity. For purposes of employment, ''qualified individual with handicaps'' means ''qualified handicapped person'' as defined in 29 CFR 1613.702(f), which is made applicable to this part by §1803.10.

Section 504 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; and by the Rehabilitation Act amendments of 1986, Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by the Foundation and not to federally assisted programs.

§1803.4 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps, 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 Foundation shall proceed to make the necessary modification.

(b) The Foundation shall, for at least three years following completion of the 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.

§1803.5 Notice.

The Foundation 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 Foundation as the

Executive Secretary finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1803.6 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 subject to this part.

(b) The Foundation may not, either directly or through arrangements with others, on the basis of handicap—

(1) Discriminate against a qualified individual with handicaps in the award or renewal of scholarships, through selection criteria or otherwise;

(2) Deny a qualified individual with handicaps the opportunity to participate as a member of boards or panels used to screen scholarship applicants;

(3) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(4) Otherwise subject a qualified individual with handicaps to discrimination.

(c) The Foundation may not, either directly or through arrangements with others, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(d) The Foundation shall administer programs and activities in the most feasibly integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 1803.7 Program accessibility: Existing facilities.

(a) The Foundation 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 necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps, but no qualified individual with handicaps shall be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any of the Foundation's programs and activities because any of the Foundation's facilities are inaccessible to or unusable by individuals with handicaps.

(b) When the Foundation uses facilities leased or otherwise provided by the General Services Administration (GSA), it shall request GSA to make any structural changes that the Foundation determines are required to provide necessary accessibility for individuals with handicaps, and shall inform that agency of any complaints regarding accessibility by individuals with handicaps.

(c) The Foundation periodically uses meeting rooms or similar facilities made available by non-federal entities. In any instances in which such temporarily used facilities are not readily accessible to qualified individuals with handicaps, the Foundation shall make alternative arrangements so that such qualified individuals with handicaps can participate fully in the Foundation's activity.

(d) This section does not require the Foundation 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 administration burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary 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 an alteration or

such burdens, the Foundation shall take other action not resulting 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 programs or activities.

§ 1803.8 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 Foundation 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.

§ 1803.9 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 Foundation. 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.

§ 1803.10 Communications.

(a) The Foundation shall take appropriate steps to assure that interested persons, including persons with impaired vision or hearing, can effectively communicate with the Foundation and obtain information as to the existence and availability of the Foundation's programs and activities.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in the scholarship interview process or other programs or activities conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices or other devices of a personal nature.

(2) When the Foundation communicates with applicants and beneficiaries by telephone, the Foundation shall use, for persons with impaired hearing, a telecommunication device for deaf persons or equally effective telecommunication device.

(b) The Foundation shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the Foundation's programs or activities.

(c) This section does not require the Foundation 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 Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraphs (a) and (b) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all Foundation resources available for use in the funding and operation of a 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 an alteration or such burdens, the Foundation shall take other action not resulting 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 programs or activities.

§ 1803.11 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 or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of § 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 Executive Secretary.

(d) The Foundation shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Foundation may extend this time period for good cause.

(e) If the Foundation receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is used by the Foundation that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) The Foundation shall notify the complainant of the results of the investigation within 90 days of the receipt of a complete complaint over which it has jurisdiction. Notification must be in a letter, and must include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation discovered; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The Foundation may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the General Counsel.

(j) The Foundation shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Foundation determines that it needs additional information from the complainant, it shall have 90 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Foundation may delegate its authority for conducting complaint investigations to other federal agencies, but may not delegate to another agency the authority for making the final determination.

PARTS 1804–1899 [RESERVED]

CHAPTER XXI—COMMISSION OF FINE ARTS

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PART 2101—FUNCTIONS AND ORGANIZATION

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2101.11 Secretary to the Commission.
2101.12 Georgetown Board of Architectural Consultants.

AUTHORITY: Pub. L. 81–808, 64 Stat. 903; 10 U.S.C. 4594; 36 U.S.C. 124; 40 U.S.C. 72, 104, 106, 121, 1001; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; and E.O. 3524 of July 28, 1921.

SOURCE: 62 FR 4646, Jan. 31, 1997, unless otherwise noted.

Subpart A—Functions and Responsibilities of the Commission

§ 2101.1 Statutory and Executive Order Authority.

The Commission of Fine Arts (referred to as the ''Commission'') functions pursuant to statutes of the United States and Executive Orders of Presidents, as follows:

(a) *Public buildings, other structures, and parklands.* (1) For public buildings to be erected in the District of Columbia by the federal government and for other structures to be so erected which affect the appearance of the city, the Commission comments and advises on the plans and on the merits of the designs before final approval or action;

(2) For statues, fountains and monuments to be erected in the District of Columbia under authority of the federal government, the Commission advises upon their location in public squares, streets, and parks, and the merits of their designs;

(3) For monuments to be erected at any location pursuant to the American Battle Monuments Act, the Commission approves the designs before they are accepted by the American Battle Monuments Commission (See also § 2101.1 (g));

(4) For parks within the District of Columbia, when plans of importance are under consideration, the Commission advises upon the merits of the designs; and

(5) For the selection by the National Capital Planning Commission of lands suitable for development of the National Capital park, parkway, and playground system in the District of Columbia, Maryland, and Virginia, the Commission provides advice.

(b) *Private buildings bordering certain public areas in Washington, D.C. (Shipstead-Luce Act).* For buildings to be erected or altered[1] in locations which border the Capitol, the White House, the intermediate portion of Pennsylvania Avenue, the Mall Park System, Lafayette Park, the Zoological Park, Rock Creek Park or Parkway, or Potomac Park or Parkway, or are otherwise within areas defined by the official plats prepared pursuant to Sec. 2 of the Shipstead-Luce Act, the Commission reviews the plans as they relate to height and appearance, color and materials of the exteriors, and makes recommendations to the Government of the District of Columbia which, in the judgement of the Commission, are necessary to prevent reasonably avoidable impairment of the public values represented by the areas along which the buildings border. (Shipstead-Luce Act, 46 Stat. 366 as amended (40 U.S.C. 121; D.C. Code 5–410).)

(c) *Georgetown buildings (Old Georgetown Act).* For buildings to be constructed, altered, reconstructed, or razed within the area of the District of Columbia known as ''Old Georgetown'', the Commission reviews and reports to the District of Columbia Government on proposed exterior architectural features, height, appearance, color, and texture of exterior materials as would

[1] Alteration does not include razing (*Commissioner of the District of Columbia* v. *Bennenson*, D.C. Court of App. 1974, 329 A.2d 437). Partial demolition, however, is viewed as an alteration (The Committee to Preserve Rhodes Tavern and the Natl. Processional Route v. Oliver T. Carr Company, et. al., U.S. Court of App. for D.C. Cir., 1979, 79–1457, Dept. Justice Brief for Fed. Appellee).

be seen from public space; and the Commission makes recommendations to such government as to the effect of the plans on the preservation and protection of places and areas that have historic interest or that manifest exemplary features and types of architecture, including recommendations for any changes in plans necessary in the judgement of the Commission to preserve the historic value of Old Georgetown, and takes any such actions as in the judgement of the Commission are right or proper in the circumstances. (Old Georgetown Act, Public Law 81–808, 64 Stat. 903 (D.C. Code 5–801).)

(d) *United States medals, insignia, and coins.* On medals, insignia, and coins to be produced by an executive department of the United States including the Mint, the Commission advises as to the merits of their designs which shall be submitted before the executive officer having charge of the same shall approve thereof.

(e) *Heraldic services provided by the Department of the Army.* The Commission upon request advises the Heraldic Branch of the Army upon the merits of proposed designs for medals, insignia, seals, etc. prepared under the authority of the Act of August 26, 1957 to furnish heraldic services to the other departments and agencies of the government.

(f) *Questions of art with which the Federal government is concerned.* When required to do so by the President or by Committees of either House of Congress, the Commission advises generally on questions of art, and whenever questions of such nature are submitted to it by an officer or department of the federal government the Commission advises and comments.

(g) *Commemorative works.* The Commemorative Works Act provides standards for placement of commemorative works on certain federal lands in the District of Columbia and its environs, and for other purposes; and requires site and design approval of all commemorative works by the Commission of Fine Arts, National Capital Planning Commission, and (as appropriate) the Secretary of Interior or the Administrator of General Services. The sponsoring agencies therefore shall submit designs to the Commission for review and shall provide such design changes as may be required to obtain approval.

§ 2101.2 Relationships of Commission's functions to responsibilities of other government units.

(a) *Projects involving the Capitol building and the Library of Congress.* Plans concerning the Capitol building and the buildings of the Library of Congress are outside the purview of the Commission except as to questions on which the Committees of Congress require the Commission to advise.

(b) *Other Federal government projects.* Officers and departments of the federal government responsible for finally approving or acting upon proposed projects within the purview of the Commission's functions as described in § 2101.1 (a) are required first to submit plans or designs for such projects to the Commission for its advice and comments.

(c) *Projects within the jurisdiction of the District of Columbia government.* The District of Columbia seeks Commission advice on exterior alteration or new construction of public buildings or major public works within its boundaries. The District of Columbia government also shall seek Commission advice on certain private construction requiring building or demolition permits from the D.C. Permit Branch (D.C. Law 5–422). These include certain actions by the District of Columbia government pursuant to either D.C. Law 5–422 or D.C. Law 2–144 within areas subject to the Shipstead-Luce or Old Georgetown Acts (§ 2101.1 (b) and (c)) prior to the issuance of a permit.[2] Alterations of buildings, demolition, or new construction at individually designated landmarks or within historic districts are further subject to the permit requirements of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2–144). Upon request, advice will be given on the subject of lot subdivisions.

[2] Provisions of the Shipstead-Luce Act (§ 2101.1 (b)) do not include full demolition, though partial demolition is viewed as an alteration.

Subpart B—General Organization

§ 2101.10 The Commission.

The Commission is composed of seven members, each of whom is appointed by the President and serves for a period of four years or until his or her successor is appointed and qualified. The Chairman and Vice Chairman are elected by the members. The Commission is assisted by a staff as authorized by the Commission.

§ 2101.11 Secretary to the Commission.

Subject to the direction of the Chairman, the Secretary to the Commission is responsible for the day-to-day operations of the agency and for supervising the staff in its support of the functions of the Commission; for preparing the agenda of Commission meetings; for organizing presentations before the Commission of plans, designs, or questions upon which it is to advise, comment, or respond; for interpreting the Commission's conclusions, advice, or recommendations on each matter submitted to it; for maintaining a liaison with other governmental entities, professionals, and the public; and for maintaining the Commission's records. The Assistant Secretary of the Commission shall carry out duties delegated to him/her by the Secretary and shall act in place of the Secretary during his/her absence or disability.

§ 2101.12 Georgetown Board of Architectural Consultants.

To assist the Commission in carrying out the purposes of the Old Georgetown Act (§ 2101.1 (c)), a committee of three architects appointed for a term of three years by the Commission serves as the Board of Architectural Consultants without expense to the United States. This committee advises the Commission regarding designs and plans referred to it. The Chairman is elected by its members.

PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

Subpart A—Commission Meetings

Sec.
2102.1 Times and places of meetings.
2102.2 Actions outside of meetings.
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2102.14 Consent Calendar and Appendices procedures.

AUTHORITY: 5 U.S.C., App. 1.

SOURCE: 62 FR 4647, Jan. 31, 1997, unless otherwise noted.

Subpart A—Commission Meetings

§ 2102.1 Times and places of meetings.

Regular meetings of the Commission, open to the public, are held monthly on the third Thursday of the month, beginning at 10 a.m., at its offices in Suite 312, 441 F Street, N.W. Washington, D.C. 20001, except that by action of the Commission a regular meeting in any particular month may be omitted or it may be held on another day or at a different time or place. A special meeting, open to the public, may be held in the interval between regular meetings upon call of the Chairman and five days' written notice of the time and place mailed to each member who does not in writing waive such notice. On all matters of official business, the Commission shall conduct its deliberations and reach its conclusions at such open meetings except as stated in § 2101.12 provided, however, the Commission members may receive staff briefings or may have informal background discussions among themselves and the staff outside of such meetings.

§ 2102.2 Actions outside of meetings.

Between meetings in situations of emergency, the Commission may act through a canvass by the Secretary of individual members, provided that any action so taken is brought up and ratified at the next meeting. In addition,

the Commission members may convene away from the Commission's offices to make inspections at the site of a proposed project or at the location of a mock-up for the project and may then and there reach its conclusions respecting such project which shall be recorded in the minutes of the meeting held on the same day or, if none was then held, in the minutes of the next meeting.

§ 2102.3 Public notice of meetings.

Notice of each meeting of the Commission shall be published in the FEDERAL REGISTER.

§ 2102.4 Public attendance and participation.

Interested persons are permitted to attend meetings of the Commission, to file statements with the Commission at or before a meeting, and to appear before the Commission when it is in meeting, provided that an appearance is germane to the functions and policies of the Commission and to the matter or issues then before the Commission, and if the presentation or argument is made in a concise manner, within reasonable time limits and avoids duplicating information or views already before the Commission. A decision of the Chairman as to the order of appearances and as to compliance with these regulations by any person shall be final unless the Commission determines otherwise.

§ 2102.5 Records and minutes; public inspection.

A detailed record of each meeting shall be made and kept which shall contain copies of all written, printed, or graphic materials presented. The Secretary shall have prepared minutes of each meeting which shall state the time and place it was held and attendance by Commission members and staff and which shall contain a complete summary of matters discussed and conclusions reached and an explanation of the extent of public participation, including names of persons who presented oral or written statements; and he shall send a copy to all members of the Commission for their approval. Subsequent to such approval, the minutes shall be certified by the Secretary. The minutes and any completed reports, studies, agenda or other documents made available to, or prepared for or by, the Commission shall be available for public inspection and, at the requesting party's expense, for copying at the offices of the Commission.

Subpart B—Procedures on Submissions of Plans or Designs

§ 2102.10 Timing, scope and content of submissions for proposed projects involving land, buildings, or other structures.

(a) A party proposing a project which is within the purview of the Commission's functions under § 2101.1 (a), (b), or (c) should make a submission when concept plans for the project are ready but before detailed plans and specifications or working drawings are prepared. In order to assure that a submission will be considered at the next scheduled meeting of the Commission, it should be delivered to the Commissions offices not later than ten (10) working days before the meeting; if it is a project subject to review first by the Georgetown Board, not later than ten (10) working days before the Georgetown Board meeting. The Commission will attempt to consider a submission which is not made in conformity with this schedule, but it reserves the right to postpone consideration until its next subsequent meeting.

(b) (1) Each submission should state or disclose:

(i) The nature, location, and justification of the project, including any relevant historical information about the building or other structure to be altered or razed;

(ii) The identity of the owner or developer (or for public buildings, the governmental unit with authority to approve or act upon the plans) and of the architect;

(iii) The functions, uses, and purpose of the project; and

(iv) Other information to the extent it is relevant, such as area studies, site plans, building and landscape schematics, renderings, models, depictions or samples of exterior materials and

components, and photographs of existing conditions to be affected by the project.

(2) Alternative proposals may be included within one submission. The information submitted shall be sufficiently complete, detailed, and accurate as will enable the Commission to judge the ultimate character, siting, height, bulk, and appearance of the project, in its entirety, including the grounds within the scope of the project, its setting and environs, and its effect upon existing conditions and upon historical and prevailing architectural values. Record drawings and photographs will be submitted by the applicant for a permanent Commission record of the submission.

(c) If a project consists of a first or intermediate phase of a contemplated larger program of construction, similar information about the eventual plans should accompany the submission. Even though a submission relates only to approval for razing or removal of a building or other structure, the project will be regarded as part of phased development, and the submission is subject to such requirement.

(d) If the project involves a statue, fountain or a monument within the purview of the Commission under § 2101.1 (a)(2), partial submissions should be made as appropriate to permit the Commission to advise on each aspect of the project as prescribed by the Commemorative Works Act (Pub. L. 99–652, H.R. 4378, 40 U.S.C. 1001).

(e) The Commission staff will advise owners and architects concerning the scope and content of particular submissions. Material relevant to the functions and policies of the Commission varies greatly depending upon the nature, size, and importance of the project to be reviewed by the Commission. Also, it is the policy of the Commission not to impose unnecessary burdens or delays on persons who make submissions to the Commission. However, the Commission at any meeting may decline to reach a conclusion about a proposed project if it deems the submission materials inadequate for its purposes, or it may condition its conclusions on the submission of further information to it at a later meeting or, in its discretion, may delegate final action to the staff.

(f) The Commission staff, members of the Georgetown Board, interested members of the public, or the submitting party may augment any submission by additional relevant information made available to the Commission before or at the meeting where the submission is considered. The staff should also make information available concerning prior considerations or conclusions of the Commission regarding the same project or earlier versions of it.

§ 2102.11 Scope and content of submissions for proposed medals, insignia, coins, seals, and the like.

Each submission of the design for a proposed item which is within the Commission's purview under § 2101.1 (d) should identify the sponsoring government unit and disclose the uses and purpose of the item, the size and forms in which it will be produced, and the materials and finishes to be used, including colors if any, along with a sketch, model, or prototype.

§ 2102.12 Responses of Commission to submissions.

(a) The Commission before disposing of any project presented to it may ask for the proposed plans or designs to be changed in certain particulars and resubmitted, or for the opportunity to review plans, designs, and specifications in certain particulars at a later stage in their development, and to see samples or mock-ups of materials or components; and when appropriate in the matter of a statue or other object of art, the Commission may ask for the opportunity to see a larger or full-scale model. All conclusions, advice, or comments of the Commission which lead to further development of plans, designs, and specifications or to actual carrying out of the project are made in contemplation that such steps will conform in all substantial respects with the plans or designs submitted to the Commission, including only such changes as the Commission may have recommended; any other changes in plans or designs require further submission to the Commission.

(b) In the case of plans submitted with a permit application subject to

the Old Georgetown Act (§ 2101.1(c)), if the Commission does not respond with a report on such plans within forty-five days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(1) In the case of a concept application submitted for a project subject to the Old Georgetown Act (§ 2101.1(c)), the Commission's approval is valid for two years. At the end of the two years, the original owner for the project may submit a new concept application requesting to extend the approval for one more year. The Commission, however, may decline to extend its approval.

(2) [Reserved]

(c) In the case of plans submitted with a permit application subject to the Shipstead-Luce Act (§ 2101.1(b)), if the Commission does not respond with a report on such plans within thirty days after their receipt by the Commission, its approval shall be assumed and a permit may be issued by the government of the District of Columbia.

(1) In the case of a concept application for a project subject to the Shipstead-Luce Act (§ 2101.1(b)), the Commission's approval is valid for two years. At the end of the two years, the original owner for the project may submit a concept application requesting to extend the approval for one more year. The Commission, however, may decline to extend its approval.

(2) [Reserved]

(d) In the event that any project or item within the Commission's purview under 2101.1 has not progressed to a substantial start of construction or production within four years following the Commission meeting date on which the final design was approved, the Commission's approval is suspended. The plans or designs previously approved or alternative plans or designs, may thereupon be resubmitted for Commission review. The Commission's subsequent approval, if granted, shall remain in effect for four years.

[62 FR 4647, Jan. 31, 1997, as amended at 73 FR 29712, May 22, 2008]

§ 2102.13 Project eligibility criteria for placement on a Consent Calendar.

With respect to submissions to the Commission for projects that meet the following criteria, the Secretary, at his/her discretion and in coordination with the Commission's staff, may place these projects on a Consent Calendar according to § 2102.14.

(a) Additions to buildings of less than 25 percent (%) of the original structure and no more than 25,000 sq. ft.;

(b) New construction of less than 25,000 sq. ft.;

(c) Window replacement projects;

(d) Cellular or other communications antenna installations or replacements;

(e) New or replacement signs;

(f) Cleaning, routine maintenance, repairs or replacement-in-kind of exterior finish materials;

(g) Temporary utility or construction structures;

(h) And does not include new physical perimeter security items.

[70 FR 49194, Aug. 23, 2005]

§ 2102.14 Consent Calendar and Appendices procedures.

(a) The Commission shall review applications scheduled on its Meeting Agenda, Consent Calendar, or Appendices (Old Georgetown Act and Shipstead-Luce Act). Cases on the Meeting Agenda will be heard by the Commission in open session. Cases on the Consent Calendar or Appendices will be acted upon based on submitted materials and staff recommendations without further public comment.

(b) The Commission shall release the proposed Meeting Agenda, and the Consent Calendar and Appendices with staff recommendation to the public not later than five (5) calendar days before the meeting.

(c) The scheduling of cases on the Meeting Agenda, Consent Calendar, and Appendices shall be at the sole discretion of the Commission and staff, and nothing shall preclude the Commission from amending or changing the scheduling at a public meeting.

(d) The staff shall prepare a written recommendation for each case on the Consent Calendar or Appendices the Commission will review.

(e) The Commission shall conduct public review of cases in accordance with a proposed Agenda released to the public before the Commission meeting. The Commission shall dispose of other

cases by adoption of a Consent Calendar and Appendices, as appropriate. The Commission may amend the Meeting Agenda, Consent Calendar and Appendices at the public meeting as it may deem appropriate.

(f) An application may be placed on the Consent Calendar if the applicant and staff agree that the proposed work has no known objection by an affected government agency, neighborhood organization, historic preservation organization, or affected person. Any relevant terms or modifications agreed upon by the applicant and staff may be included as conditions of the approval.

(g) At the request of any Commission member, the Chairperson may remove any case from the Consent Calendar and place it on the Meeting Agenda for individual consideration by the Commission at the meeting. A request from any other group or person to remove a case from the Consent Calendar should be made to the staff in advance of the meeting and shall be considered as a preliminary matter at the meeting.

(h) The Chairperson may also remove any case from a duly noticed Meeting Agenda and place it on the Consent Calendar, provided there is no objection from the applicant, any Commission member, or any affected group or person present and wishing to comment on the case.

(i) The Commission may approve the Consent Calendar and Appendices on a voice vote.

[70 FR 49194, Aug. 23, 2005]

PART 2103—STATEMENTS OF POLICY

AUTHORITY: Pub. L. 81–808, 64 Stat. 903; 40 U.S.C. 72, 104, 106, and 121; E.O. 1259 of October 25, 1910; E.O. 1862 of November 28, 1913; E.O. 3524 of July 28, 1921.

§ 2103.1 General approaches to review of plans by the Commission.

The Commission functions relate to the appearance of proposed projects within its purview as specified herein. These functions are to serve the purpose of conserving and enhancing the visual assets which contribute significantly to the character and quality of Washington as the nation's capital and which appropriately reflect the history and features of its development over two centuries. Where existing conditions detract from the overall appearance of official Washington or historic Georgetown—such as conditions caused by temporary, deteriorated, or abandoned buildings of little or no historical or architectural value, by interrupted developments, or by vacant lots not devoted to public use as parks or squares—the Commission will favor suitable corrections to these conditions. When changes or additions are proposed in other circumstances, the Commission may consider whether the public need or value of the project or the private interests to be served thereby justify making any change or addition, and it will consider whether the project can be accomplished in reasonable harmony with the nearby area, with a minimum loss of attractive features of the existing building or site, with due deference to the historical and architectural values affected, and without creating an anomalous disturbing element in the public view of the city.

[62 FR 4649, Jan. 31, 1997]

PART 2104—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE COMMISSION OF FINE ARTS

Sec.

2104.101 Purpose.
2104.102 Application.
2104.103 Definitions.
2104.104–2104.109 [Reserved]
2104.110 Self-evaluation.
2104.111 Notice.
2104.112–2104.129 [Reserved]
2104.130 General prohibitions against discrimination.
2104.131–2104.139 [Reserved]
2104.140 Employment.
2104.141–2104.148 [Reserved]
2104.149 Program accessibility: Discrimination prohibited.
2104.150 Program accessibility: Existing facilities.
2104.151 Program accessibility: New construction and alterations.
2104.152–2104.159 [Reserved]
2104.160 Communications.
2104.161–2104.169 [Reserved]
2104.170 Compliance procedures.

2104.171–2104.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22895, 22896, June 23, 1986, unless otherwise noted.

§ 2104.101 Purpose.

This part effectuates 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.

§ 2104.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 2104.103 Definition.

For purposes of this part, the term—

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, telecommunications devices 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. 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.

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.

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 alocoholism.

(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 limits major

life activities only as a result of the attitudes of others toward such impairment; or

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

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education 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, a handicapped person who meets the essential eligibility requirements and who can acheive 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, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 2104.140.

Section 504 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), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2104.104–2104.109 [Reserved]

§ 2104.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, 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 handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, 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.

§ 2104.111 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 and this regulation.

§§ 2104.112–2104.129 [Reserved]

§ 2104.130 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 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 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) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) 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) The agency may not deny a qualified handicapped person 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 arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons 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 handicapped persons.

(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 handicapped persons 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 handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons 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 handicapped persons.

§§ 2104.131–2104.139 [Reserved]

§ 2104.140 Employment.

No qualified handicapped person 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.

§§ 2104.141–2104.148 [Reserved]

§ 2104.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2104.150, no qualified handicapped person shall, because the agency'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 conducted by the agency.

§ 2104.150 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 handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) 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 § 2104.150(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 reaching 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 handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* 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 handicapped persons. 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 handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 2104.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 2104.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, 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, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, 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 handicapped persons;

(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 official responsible for implementation of the plan.

§ 2104.151 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 handicapped persons. 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.

§§ 2104.152–2104.159 [Reserved]

§ 2104.160 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 a handicapped person 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 is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually precribed 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 person (TDD's) or equally effective telecommunication systems shall be used.

(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 signage 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 used at each primary entrance of an 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 adminstrative 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 § 2104.160 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 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, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 2104.161–2104.169 [Reserved]

§ 2104.170 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 or 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) The Secretary, Commission of Fine Arts, shall be responsible for coordinating implementation of this section. Complaints may be sent to Secretary, Commission of Fine Arts, 708 Jackson Place NW., Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2104.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22895, 22896, June 23, 1986, as amended at 51 FR 22895, June 23, 1986]

§§ 2104.171–2104.999 [Reserved]

PART 2105—RULES FOR COMPLIANCE WITH 5 U.S.C. 552, THE FREEDOM OF INFORMATION ACT

Sec.

2105.1 Purpose and scope.

2105.2 Requests for identifiable records and copies.
2105.3 Action on initial requests.
2105.4 Appeals.
2105.5 Fees.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 40 FR 40802, Sept. 4, 1975 , unless otherwise noted. Redesignated and amended at 51 FR 23056, June 25, 1986.

§ 2105.1 Purpose and scope.

This part contains the regulations of the Commission of Fine Arts implementing 5 U.S.C. 552. The regulations of this part provide information concerning the procedures by which records may be obtained from the Commission. Members and employees of the Commission may continue to furnish to the public, informally and without neglecting the rights of requesters described herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. Persons seeking information or records of the Commission may find it useful to consult with the Secretary before invoking the formal procedures set out below.

§ 2105.2 Requests for identifiable records and copies.

(a) Formal public requests for information from the records of the Commission of Fine Arts shall be made in writing with the letter clearly marked ''FREEDOM OF INFORMATION REQUEST.'' All such requests should be addressed to the Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006.

(b) Records must be reasonably described. A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Commission operations.

§ 2105.3 Action on initial requests.

(a) The Secretary will make a determination as to whether or not to release requested information. Generally, determination will be made to release the requested information if: (1) It is not exempt from disclosure or

(2) It is exempt from disclosure but its withholding is neither required by statute, nor supported by sound grounds.

(b) Determination will be dispatched within ten days, excluding Saturdays, Sundays, and legal public holidays, after initial receipt of the request.

(c) In unusual circumstances, the time for initial determination on requests may be delayed up to a total of ten additional days, excluding Saturdays, Sundays, and legal public holidays and notice of such delay shall be dispatched within the first ten days, excluding Saturdays, Sundays, and legal public holidays following the initial receipt of the request.

(d) Letters denying access to information will:

(1) Provide the requester with the reason for the denial.

(2) Inform the requester of his right to appeal the denial within 30 days.

(3) Give the name and title of the official to whom the appeal may be sent.

(4) Give the name and title of the official responsible for the denial.

§ 2105.4 Appeals.

(a) The Chairman of the Commission is the appellate authority for all denials.

(b) The Chairman will act upon the appeal within twenty days, excluding Saturdays, Sundays, and legal public holidays.

(c) In unusual circumstances, the time for action on an appeal may be extended by an additional ten days, excluding Saturdays, Sundays, and legal public holidays minus any extension granted at the initial request level under § 2105.3(c).

(d) In the event that the appeal upholds the denial, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

§ 2105.5 Fees.

(a) Fees shall be charged according to the schedule in paragraph (b) of this section for services rendered in responding to requests for Commission of Fine Arts records under this part unless determination is made that such

charges or a portion of them are not in the public interest because furnishing the information primarily benefits the general public.

(b) The following charges will be assessed for the services listed:

(1) For copies of documents 8½″ × 14″ or smaller, $0.25 for the first copy of the first page and $0.10 for each copy of each page thereafter.

(i) Ordinarily, no more than one copy of each page will be supplied.

(ii) Ordinarily, photographs 8½″ × 14″ or smaller will be copied on a photocopy machine, rather than by photographing and printing of such photographs.

(2) When in responding to a request, copying of bound works such as books or periodicals, copying of documents larger than 8½″ × 14″, photographing and printing of records, or other services not normally performed by the Commission and its staff are required, the direct cost of such services or material to the Commission of Fine Arts may be charged, but only if the requester has been notified of such cost before it is incurred.

(3) For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, $1.50.

(4) When a search cannot be performed by clerical personnel and the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges may be made at a rate in excess of the clerical rate, namely, for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $3.

(5) No charge will be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge will be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld, as a matter of sound policy. In addition, no charge will ordinarily be made if the records requested are not found. However, if the time expended in processing the request is substantial, and if the requester has been notified that it cannot be determined in advance whether any records will be made available, fees may be charged.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than $10, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification will be transmitted as soon as possible but in any event, within five days, excluding Saturdays, Sundays, and legal public holidays after the receipt of the initial request.

(d) Payment should be made by check or money order payable to the U.S. Treasury.

(e)(1) Where the anticipated fee chargeable under this section exceeds $10, an advance deposit of 25% of the anticipated fee or $10, whichever is greater may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

PART 2106—RULES FOR COMPLIANCE WITH 5 U.S.C. 552a, THE PRIVACY ACT OF 1974

Sec.

2106.1 Rules for determining if an individual is the subject of a record.
2106.2 Requests for access.
2106.3 Access to the accounting of disclosures from records.
2106.4 Requests for copies of records.
2106.5 Requests to amend records.
2106.6 Request for review.
2106.7 Schedule of fees.

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a(f)).

SOURCE: 40 FR 52369, Nov. 10, 1975, unless otherwise noted. Redesignated and amended at 51 FR 23056, June 25, 1986.

§ 2106.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Commission of Fine Arts contains a record pertaining to them should address their inquiries to the

Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006. The written inquiry should contain a specific reference to the system of records maintained by CFA listed in the CFA Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of CFA Systems of Records will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Secretary when so published. A compilation of such notices will also be made and published by the Office of the Federal Register in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should contain sufficient identifying information to allow CFA to determine if there is a record pertaining to the individual making the request in a particular system of records. In instances where identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, CFA reserves the right to solicit from the requester additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of the receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within 10 days, the Secretary will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

§ 2106.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section.

(b) *Procedures.* (1) Content of the request. The request for access to a record in a system of records shall be addressed to the Secretary, at the address cited above; and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of such a statement, if the request is for a record pertaining to the requester maintained by CFA in a system of records, the request will be presumed to be made under the Privacy Act of 1974. The requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.).

(2) Requirements for identification will normally be limited to the presentation of any standard picture and signature or signature identification card, such as driver's license, so that a comparison of the signature and the signature on the original request may be made. The appearing individual will be read paragraph (3), subsection (i) to title 5 U.S.C. 552a which specifies the penalty for knowingly or willfully requesting or obtaining a record concerning an individual from an agency under false pretenses and asked to sign a statement attesting to the fact that he or she understands the paragraph and that he or she is, in fact, the individual who made the request (or the individual authorized to receive the disclosure by the requesting individual). This signature will be compared with the other two. If the appearing individual is other than the requesting individual, then he or she must also present a letter of introduction signed by the requesting individual so that the comparison of signature may be made.

(c) *CFA action on request.* (1) A request for access will ordinarily be answered within 10 days (excluding Saturdays, Sundays, and legal Federal holidays), except when the Secretary determines otherwise, in which case the requester will be informed of the reason for the delay and an anticipated date by which the request will be answered. When the request can be answered within 10 days, it shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by CFA;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternate arrangements may be made with the official specified in paragraph (b)(1) of this section;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Secretary has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see §§ 2106.4 and 2106.7); and

(v) The name, title, and telephone number of the CFR official having operational control over the record.

(A) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by CFA in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of documents authorizing the legal guardian to so act; and upon suitable personal identification of the guardian.

(B) *Granting access when accompanied or represented by another individual.* When an individual requesting access to his or her record in a system of records maintained by CFA wishes to be accompanied or represented by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record a signed statement authorizing that person access to the record.

(C) *Access in response to congressional inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(vi) *Medical records.* The records in a system of records which are medical records shall be disclosed to the individual in such a manner and following such procedures as the Secretary shall direct. When CFA, in consultation with a physician, determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, CFA may transmit such information to a physician named by the individual.

(vii) *Exceptions.* Nothing in this section shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 52369, Nov. 10, 1975, as amended at 41 FR 2385, Jan. 16, 1976]

§ 2106.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records outlined in § 2106.2 of this part.

§ 2106.4 Requests for copies of records.

Rules governing requests for copies of records are the same as those for the granting of access to the records outlined in § 2106.2 of this part (see also § 2106.7 for rules regarding fees).

§ 2106.5 Requests to amend records.

(a) *Requirements for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by CFA must submit their request in writing in accordance with the procedures set forth herein unless the requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions; however, individuals who believe that such records are inaccurate may bring this to the attention of the CFA.

(b) *Procedures.* (1)(i) The request to amend a record in a system of records shall be addressed to the Secretary. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the

record is the result of the individual's having gained access to the record as set forth above, copies of previous correspondence between the requester and CFA will serve in lieu of a separate description of the record.

(ii) Individuals desiring assistance in the preparation of a request to amend a record should contact the Secretary at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or, at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete, should be set forth with such particularity as to permit CFA not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by CFA of personal information merely to permit the verification of records, the burden of persuading CFA to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(2) *CFA action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days (excluding Saturdays, Sundays, and legal Federal holidays). In the event that a decision cannot be made within this time frame, the individual making the request will be informed within the 10 days of the expected date for a decision. The decision upon a request for amendment will include the following:

(i) The decision of the Commission of Fine Arts whether to grant in full, or deny any part of the request to amend the record;

(ii) The reasons for the determination for any part of the request which is denied;

(iii) The name and address of the official with whom an appeal of the denial may be lodged;

(iv) The name and address of the official designated to assist, as necessary, and upon the request of, the individual making the request in preparation of the appeal;

(v) A description of the review of the appeal within CFA (see § 2106.6); and

(vi) A description of any other procedures which may be required of the individual in order to process an appeal.

§ 2106.6 Request for review.

(a) Individuals wishing to request a review of the decision by CFA with regard to an initial request to amend a record in accordance with the provisions of § 2106.5 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in paragraph (a) of this section. Individuals desiring assistance in the preparation of their request for review should contact the Secretary at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from CFA in which the request to amend was denied and also the reasons why the requester believes that the disputed information should be amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by § 2106.5 of this part set forth by CFA in its decision denying the amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be understandably set forth. In order to avoid the unnecessary retention of personal information, CFA reserves the right to dispose of the material concerning the request to amend a record if no request for review in accordance with this section is received by CFA within 180 days of the mailing by CFA of its decision upon an initial request. A request for review received after the 180–day period may, at the discretion of the Secretary, be treated as an initial request to amend a record.

(c) The request for review should be addressed to the Secretary.

(d) Upon receipt of a request for review, the Secretary will convene a review group composed of the Secretary and the Chairman. This group will review the basis for the requested review and will develop a recommended course of action to the office's Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). If at any time additional information is required from the requestee, the Secretary is authorized to acquire it or authorize its acquisition from the requester.

(e) The Committee is composed of:

(1) The Chairman;

(2) The Secretary;

(3) The Assistant Secretary;

(4) The Administrative Assistant.

(f) The Committee will review the request for review and the recommended course of action and will recommend a decision on the request for review to the Chairman, who has the final authority regarding appeals.

(g) The Chairman will inform the requester in writing of the decision on the request for review within 30 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by CFA of the individual's request for review unless the Chairman extends the 30-day period for good cause. The extension of and the reasons therefor will be sent by CFA to the requester within the initial 30–day period. Included in the notice of a decision being reviewed, if the decision does not grant in full the request for review, will be a description of the steps the individual may take to obtain judicial review of such a decision, and a statement that the individual may file a concise statement with CFA setting forth the individual's reasons for his disagreement with the decision upon the request for review. The Secretary has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will have the information in dispute clearly noted and a copy of the concise statement furnished, as well as a concise statement by CFA setting forth its reasons for not making the requested changes, if CFA chooses to file such a statement. A copy of the individual's statement, and, if it chooses, CFA's statement will be sent to any prior transferree of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c).

§ 2106.7 Schedule of fees.

No fees will be charged for search, review, or copies of the record.

PARTS 2107–2199 [RESERVED]

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PART 2300 [RESERVED]

PART 2301—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES ARCTIC RESEARCH COMMISSION

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2301.171–2301.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57698, 57699, Oct. 26, 1993, unless otherwise noted.

§ 2301.101 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.

§ 2301.102 Application.

This part (§§ 2301.101–2301.170) 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.

§ 2301.103 Definitions.

For purposes of this part, the term—

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 (TTD'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. 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.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual 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, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include 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 limits 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 education 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 1614.203(a)(6), which is made applicable to this part by § 2301.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2301.104–2301.109 [Reserved]

§ 2301.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, 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, 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.

§ 2301.111 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 and this part.

§§ 2301.112–2301.129 [Reserved]

§ 2301.130 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 an aid, benefit, or service that is not as effective in according 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;

(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 no 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—

(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.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified

individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(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.

§§ 2301.131–2301.139 [Reserved]

§ 2301.140 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 1614, shall apply to employment in federally conducted programs or activities.

§§ 2301.141–2301.148 [Reserved]

§ 2301.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2301.150, 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.

§ 2301.150 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;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) 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 § 2301.150(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 reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that 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*—(1) *General.* 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.

(2) *Historic preservation programs.* In meeting the requirements of § 2301.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 2301.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, 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, by May 26, 1994, 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 official responsible for implementation of the plan.

§ 2301.151 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.

§§ 2301.152–2301.159 [Reserved]

§ 2301.160 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 is necessary, 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 signage 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 used at each primary entrance of an 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 §2301.160 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 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, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 2301.161–2301.169 [Reserved]

§ 2301.170 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 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Executive Director, United States Arctic Research Commission, ICC Building, room 6333, 12th & Constitution Avenue, NW., Washington, DC 20423.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2301.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57698, 57699, Oct. 26, 1993]

§§ 2301.171–2301.999 [Reserved]

PARTS 2302–2399 [RESERVED]

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AUTHORITY: 20 U.S.C. 4501 *et seq.*, unless otherwise noted.

SOURCE: 61 FR 46734, Sept. 5, 1996, unless otherwise noted.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service teachers of American history, American government, social studies, and political science in grades 7–12 and by outstanding college graduates who plan to become teachers of the same subjects; and

(2) Strengthen teaching in the nation's secondary schools about the principles, framing, ratification, and subsequent history of the United States Constitution.

(b) The Foundation may from time to time operate its own programs and undertake other closely-related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual national competition to select teachers in grades 7–12, college seniors, and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to apply for and hold James Madison Fellowships are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are teaching full time during the year in which they apply for a fellowship;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as teachers of American history, American government, social studies, or political science in grades 7–12;

(3) Have demonstrated records of willingness to devote themselves to

civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school heads, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs allowing at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five calendar years from the commencement of study under their fellowships, normally through part-time study during summers or in evening or weekend programs;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is considered by the Foundation to be 18 credit hours or 27 quarter hours. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) Those who aspire to become full-time teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time and will receive those degrees no later than August 31st of the year of the fellowship competition in which they apply or prior recipients of baccalaureate degrees;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and with their serious intention to enter the teaching profession as secondary school teachers of American history, American government, social studies, or political science in grades 7–12;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs that allow at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of other forms of government;

(6) Are able to complete their proposed courses of graduate study in no more than two calendar years from the commencement of study under their fellowships, normally through full-time study;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

College means an institution of higher education offering only a baccalaureate degree or the undergraduate division of a university in which a student is pursuing a baccalaureate degree.

Credit Hour Equivalent means the number of graduate credit hours obtained in credits, courses or units during a quarter, a trimester, or a semester which are needed to equal a specific number of semester graduate credit hours.

Fee means a typical and usually nonrefundable charge levied by an institution of higher education for a service, privilege, or use of property which is *required* for a Fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time study means study for an enrolled student who is carrying at least 9 credit hours a semester or its equivalent.

Graduate study means the courses of study beyond the baccalaureate level, which are offered as part of a university's master's degree program and which lead to a master's degree.

Incomplete means a course which the Foundation has paid for but the Fellow has received an incomplete grade or the Fellow has not received graduate credit for the course.

Institution of higher education has the meaning given in Section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior Fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree and who seeks to become a secondary school teacher of American history, American government, social studies, or political science for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first predoctoral graduate degree offered by a university beyond the baccalaureate degree, for which the baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in a university.

Repayment means if the fellowship is relinquished by the fellow or is terminated by the Foundation prior to the completion of the Fellow's degree, and/or the Fellow fails to fulfill the teaching obligation after the graduate degree is awarded, the Fellow must repay to the Foundation all Fellowship costs received plus interest at a rate of 6% per annum and, if applicable, reasonable collection fees.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a Fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the Fellow's place of registration to vote, his or her parent's place of residence, and the Fellow's eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress for a Junior Fellow means the completion of the number of required courses normally expected of full-time master's degree candidates at the university that the Fellow attends, with grades acceptable to that university, in not more than two calendar years from the commencement of that study. Satisfactory progress for a Senior Fellow means the completion each year of a specific number of required courses in the Fellow's master's degree program, as agreed upon each year with the Foundation and outlined on the Plan of Study form, with grades acceptable to the Fellow's university, in not more than five calendar years from the commencement of that study.

Secondary school means grades 7 through 12.

Senior means a student at the academic level recognized by an institution of higher education as being the last year of study before receiving the baccalaureate degree.

Senior Fellowship means a James Madison Fellowship granted to a secondary school teacher of American history, American government, social studies, or political science for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf for the allowable costs of graduate study which have been approved under the fellowship.

Teaching Obligation means that a Fellow, upon receiving a master's degree, must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each year for which financial assistance was received.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Termination means the non-voluntary ending of a fellowship by the Foundation when the Fellow has not complied with the rules and regulations of the fellowship or has not made satisfactory progress in his or her program of study.

University means an institution of higher education that offers post-baccalaureate degrees.

Withdrawal means the voluntary relinquishment or surrender of a Fellowship by the Fellow.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

Subpart B—Application

§ 2400.10 Application.

Eligible applicants for fellowships must apply directly to the Foundation.

§ 2400.11 Faculty representatives.

Each college and university that chooses to do so may annually appoint or reappoint a faculty representative who will be asked to identify and recruit fellowship applicants on campus, publicize the annual competition on campus, and otherwise assist eligible candidates in preparation for applying. In order to elicit the appointment of faculty representatives, the Foundation will each year request the head of each college and university campus to appoint or reappoint a faculty representative and to provide the Foundation with the name, business address, and business telephone number of a member of its faculty representative on forms provided for that purpose.

Subpart C—Application Process

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications or downloaded from the Foundation's Web site, must be completed by all fellowship candidates in order that they be considered for an award.

[69 FR 11814, Mar. 12, 2004]

§ 2400.21 Contents of application.

Applications must include for

(a) Senior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, social studies, or political science;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contributions to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the name of the degree to be sought, the required courses to be taken, as well as information about the specific degree sought;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a teacher in grades 7–12; and

(5) A copy of his or her academic transcript.

(b) Junior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a teacher of American history, American government, social studies, or political science in grades 7–12;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contribution to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the name of the degree sought, the name of the required courses to be taken, and information about the specific degree sought;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A copy of his or her academic transcript.

§ 2400.22 Application deadline.

Completed applications must be received by the Foundation no later than March 1st of each year preceding the start of the academic year for which candidates are applying.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, social studies, or political science at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

(g) Content of the 600-word essay.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.31 Selection process.

(a) An independent Fellow Selection Committee will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the Fellow Selection Committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two legal resident applicants who meet the eligibility requirements set forth in § 2400.3 and are judged favorably against the selection criteria in § 2400.30.

(c) The Foundation may name, from among those applicants recommended by the Fellow Selection Committee, an alternate or alternates for each fellowship. An alternate may, at the Foundation's discretion receive a fellowship if

the person named as a James Madison Fellow declines the award or is not able to pursue graduate study as contemplated at the time the fellowship was accepted. An alternate may be named to replace a Fellow who declines or relinquishes an award until, but no later than, March 1st following the competition in which the alternate has been selected.

(d) Funds permitting, the Foundation may also select, from among those recommended by the Fellow Selection Committee, Fellows at large.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited university in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history or political science (including government or politics), the degree of Master of Arts in Teaching in history or political science (including government or politics), or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science. Graduate degrees under which study is excluded from fellowship support are indicated in § 2400.63.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of the university at which a Fellow is enrolled.

§ 2400.42 Approval of Plan of Study.

The Foundation must approve each Fellow's Plan of Study. To be approved, the plan must:

(a) On a part-time or full-time basis lead to a master's degree in history or political science, the degree of Master of Arts in Teaching in history or political science, or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the Constitution of the United States;

(c) Be pursued at a university that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a Fellow's satisfactory completion of the Foundation's Summer Institute on the Constitution. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at a university that encourages the Fellow to enhance his or her capacities as a teacher of American history, American government, social studies, or political science and to continue his or her career as a secondary school teacher. The Foundation reserves the right to refuse to approve a Fellow's Plan of Study at a university that will not accept on transfer the 6 credits for the Institute.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.43(b) must amount to at least 12 semester or 18 quarter hours or their credit hour equivalent of study of topics directly related to the United States Constitution. More than 12 semester hours or their credit hour equivalent of such study is strongly encouraged.

(b) The courses that fulfill the required minimum of 12 semester hours or their credit hour equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the *Federalist Papers*, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled requires a master's thesis in place of a course or courses, the Fellow will have the option of writing the thesis based on the degree requirements. The preparation of a master's thesis should not add additional required credits to the minimum number of credits required for the master's degree. If a Fellow must write a thesis, the topic of the thesis must relate to subjects concerning the framing, principles, or history of the United States Constitution. If the Fellow can choose between two degree tracks, a thesis track or a non-thesis track, the Foundation in general, requires the non-thesis track.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.44 Commencement of graduate study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.61, they may seek to postpone the commencement of fellowship study for up to one year under extenuating circumstances.

(b) In determining the two- and five-year fellowship periods of Junior and Senior Fellows respectively, the Foundation will consider the commencement of the fellowship period to be the date on which each Fellow commences study under a fellowship.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.45 Special consideration: Junior Fellows' Plan of Study.

Applicants for Junior Fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history or political science. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses, although the Foundation will not pay for them unless they are required for the degree for which the Fellow is matriculated. The Foundation will review each proposed Plan of Study for an appropriate balance of subject matter and other courses based on the Fellow's goals, background, and degree requirements.

§ 2400.46 Special consideration: second master's degree.

The Foundation may award Senior Fellowships to applicants who are seeking their second master's degrees providing that the applicants' first master's degree was obtained at least three years prior to the year in which the applicants would normally commence study under a fellowship. In evaluating applications from individuals intending to pursue a second master's degree, the Fellow Selection Committee will favor those applicants who are planning to become American history, American government, social studies, or political science teachers after having taught another subject and applicants whose initial master's degree was in a subject different from that sought under the second master's degree.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11814, Mar. 12, 2004]

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation normally offers during July a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution

at an accredited university in the Washington, DC, area. The Institute is an integral part of each fellowship.

[69 FR 11815, Mar. 12, 2004]

§ 2400.48 Fellows' participation in the Summer Institute.

Each fellow is required as part of his or her fellowship to attend the Institute (if it is offered), normally during the summer following the Fellow's commencement of graduate study under a fellowship.

[69 FR 11815, Mar. 12, 2004]

§ 2400.49 Contents of the Summer Institute.

The principal element of the Institute is a graduate history course, ''Foundations of American Constitutionalism.'' Other components of the Institute include study visits to sites associated with the lives and careers of members of the founding generation.

§ 2400.50 Allowances and Summer Institute costs.

At the Foundation's discretion, Fellows may be paid an allowance to help offset income foregone by their required attendance. The Foundation also funds the costs of the Institute and Fellows' round-trip transportation to and from the Institute site. The costs of tuition, required fees, books, room, and board entailed by the Institute will be paid for by the Foundation directly but may be offset against fellowship award limits if the credits earned for the Institute are included within the Fellows' degree requirements.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

§ 2400.51 Summer Institute accreditation.

The Institute is accredited for six graduate semester credits by the university at which it is held. It is expected that the universities at which Fellows are pursuing their graduate study will, upon Fellows' satisfactory completion of the Institute, accept these credits or their credit-hour equivalent upon transfer from the university at which the Institute is held in fulfillment of the minimum number of credits required for Fellows' graduate degrees. Satisfactory completion of the Institute will fulfill 6 of the Foundation's 12 semester credits required in graduate study of the history and development of the Constitution. Fellows, with the Foundation's assistance, are strongly encouraged to make good faith efforts to have their universities incorporate the Institute into their Plan of Study and accept the 6 Institute credits toward the minimum number of credits required for their master's degrees.

Subpart F—Fellowship Stipend

§ 2400.52 Amount of stipend.

Junior and Senior Fellowships carry a stipend of up to a maximum of $24,000 pro-rated over the period of Fellows' graduate study. In no case shall the stipend for a fellowship exceed $12,000 per academic year. Within this limit, stipends will be pro-rated over the period of Fellows' graduate study as follows: a maximum of $6,000 per academic semester or trimester of full-time study, and a maximum of $4,000 per academic quarter of full-time study. Stipends for part-time study will be pro rata shares of those allowable for full-time study.

§ 2400.53 Duration of stipend.

Stipends for Junior Fellowships may be payable over a period up to 2 calendar years of full-time graduate study, and those for Senior Fellowships may be payable over a period of not more than 5 calendar years of part-time graduate study, beginning with the dates under which Fellows commence their graduate study under their fellowships. However, the duration of stipend payments will be subject to the maximum payment limits, the length of award time limits, and the completion of the minimum degree requirements, whichever occurs first. A waiver of the time limit may be given for full-time students who require more than 36 credit hours or 54 quarter hours to complete their approved degree.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

§ 2400.54 Use of stipend.

Stipends shall be used only to pay the costs of tuition, required fees, books, room, and board associated with graduate study under a fellowship. The costs allowed for a Fellow's room and board will be the amount the Fellow's university reports to the Foundation as the cost of room and board for a graduate student if that student were to share a room at the student's university. If no shared graduate housing exists, then costs for regular shared student housing will be used. If no campus housing exists, the equivalent room and board costs at neighboring universities will be used. Stipends for room, board, and books will be prorated for Fellows enrolled in study less than full time. The Foundation will not reimburse Fellows for any portion of their master's degree study, that Fellows may have completed prior to the commencement of their fellowships. Nor will the Foundation reimburse Fellows for any credits acquired above the minimum number of credits required for the degree. If a Fellow has already taken and paid for courses that can be credited toward the Fellow's graduate degree under a fellowship, those must be credited to the degree; the remaining required courses will be paid for by the Foundation.

§ 2400.55 Certification for stipend.

In order to receive a fellowship stipend, a Fellow must submit the following nine items in writing:

(a) An acceptance of the terms and conditions of the fellowship including a completed certificate of compliance form;

(b) Evidence of admission to an approved graduate program;

(c) Certified copies of undergraduate and, if any, graduate transcripts;

(d) A certified payment request form indicating the estimated costs for tuition, required fees, books, room, and board;

(e) a photo copy of the university's bulletin of cost information;

(f) The amount and nature of income from any other grants or awards;

(g) information about the Fellow's degree requirements, including the number of required credits to fulfill the degree;

(h) a statement of the university's willingness to accept the transfer of 6 credits toward the Fellow's degree requirements for the Fellow's satisfactory completion of the Summer Institute (see § 2400.51); and

(i) A full Plan of Study over the duration of the fellowship, including information on the contents of required constitutional courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in §§ 2400.52 through 2400.55 and §§ 2400.59 through 2400.60 will be paid via Electronic Funds Transfer to each Fellow at the beginning of each term of enrollment and upon the Fellow's submission of a completed Payment Request Form which includes the current University bulletin of cost information.

[69 FR 11815, Mar. 12, 2004]

§ 2400.57 Termination of stipend.

(a) The Foundation may suspend or terminate the payment of a stipend if a Fellow fails to meet the criteria set forth in § 2400.40 through § 2400.44 and § 2400.60, except as provided for in § 2400.61. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the Fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

(b) The Foundation will normally suspend the payment of a stipend if a Fellow has more than one grade of ''Incomplete'' in courses for which the Foundation has made payment to the Fellow.

§ 2400.58 Repayment of stipend.

(a) If a Fellow fails to secure a master's degree, fails to teach American history, American government, social studies, or political science on a full-time basis in a secondary school for at least one school year for each academic year for which assistance was provided

under a fellowship, fails to secure at least 12 semester hours or their credit hour equivalent for study of the Constitution as indicated in §2400.43(b), or fails to attend the Foundation's Summer Institute on the Constitution, the Fellow must repay all of the fellowship costs received plus interest at the rate of 6% per annum or as otherwise authorized and, if applicable, reasonable collection fees, as prescribed in Section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a Fellow withdraws from the fellowship or has a fellowship terminated by the Foundation, the Fellow must repay all fellowship funds which have been remitted to the Fellow or on his or her behalf under a fellowship.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

Subpart G—Special Conditions

§2400.59 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study or to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in §2400.52 will be reduced to the extent these costs are paid from other sources, and in no case will fellowship funds be paid to Fellows to provide support in excess of their actual total costs of tuition, required fees, books, room, and board. The Foundation may also reduce a Fellow's stipend if the Fellow is remunerated for the costs of tuition under a research or teaching assistantship or a work-study program. In such a case, the Foundation will require information from a Fellow's university about the intended use of assistantship or work-study support before remitting fellowship payments.

§2400.60 Renewal of award.

(a) Provided that Fellows have submitted all required documentation and are making satisfactory academic progress, it is the intent of the Foundation to renew Junior Fellowship awards annually for a period not to exceed two calendar years or the completion of their graduate degrees, whichever comes first, and Senior Fellowships for a period not to exceed 5 calendar years (except when those periods have been altered because of changes in Fellows' Plan of Study as provided for in §2400.64), or until a Fellow has completed all requirements for a master's degree, whichever comes first. In no case, however, will the Foundation continue payments under a fellowship to a Fellow who has reached the maximum payments under a fellowship as indicated in §2400.52, or completed the minimum number of credits required for the degree. Although Fellows are not discouraged in taking courses in addition to those required for the degree or required to maintain full-time status, the Foundation will not in such cases pay for those additional courses.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the university at which a Fellow is registered that the Fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each university.

(c) As a condition of renewal of awards, each Fellow must submit an annual activity report to the Foundation by July 15th. That report must indicate, through submission of a copy of the Fellow's most recent transcript, courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the Fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

§2400.61 Postponement of award.

Upon application to the Foundation, a Fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for the requested postponement of study will be required. All postponements are given at the Foundation's

discretion and will normally not extend for more than one year.

[61 FR 46734, Sept. 5, 1996, as amended at 69 FR 11815, Mar. 12, 2004]

§ 2400.62 Evidence of master's degree.

At the conclusion of graduate studies, each Fellow must provide a certified transcript which indicates that he or she has secured an approved master's degree as set forth in the Fellow's original Plan of Study or approved modifications thereto.

§ 2400.63 Excluded graduate study.

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration. The Foundation may at its discretion, upon request of the Fellow, provide tuition only assistance toward teacher certification.

[69 FR 11815, Mar. 12, 2004]

§ 2400.64 Alterations to Plan of Study.

Although Junior Fellows are expected to pursue full-time study and Senior Fellows to pursue part-time study, the Foundation may permit Junior Fellows with an established need (such as the need to accept a teaching position) to study part time and Senior Fellows with established need (such as great distance between the Fellow's residence and the nearest university, thus necessitating a full-time leave of absence from employment in order to study) to study full time.

§ 2400.65 Teaching obligation.

Upon receiving a Master's degree, each Fellow must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each academic year for which financial assistance was received. Each Fellow will be required to provide the Foundation with an annual certification from an official of the secondary school where the Fellow is employed indicating the teaching activities of the Fellow during the past year. This same certification will be required each year until the Fellow's teaching obligation is completed. Any teaching done by the Fellow prior to or during graduate studies does not count towards meeting this teaching obligation.

§ 2400.66 Completion of fellowship.

A Fellow will be deemed to have satisfied all terms of a fellowship and all obligations under it when the Fellow has completed no fewer than 12 graduate semester hours or the equivalent of study of the Constitution, formally secured the masters degree, attended the Foundation's Summer Institute on the Constitution, completed teaching for the number of years and fractions thereof required as a condition of accepting Foundation support for study, and submitted all required reports.

PART 2490—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57699, Oct. 26, 1993, unless otherwise noted.

§ 2490.101 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.

§ 2490.102 Application.

This part (§§ 2490.101–2490.170) 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.

§ 2490.103 Definitions.

For purposes of this part, the term—

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 (TTD'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. 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.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual 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, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include 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 limits 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 education 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 1614.203(a)(6), which is made applicable to this part by § 2490.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 2490.104–2490.109 [Reserved]

§ 2490.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, 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, 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.

§ 2490.111 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 and this part.

§§ 2490.112–2490.129 [Reserved]

§ 2490.130 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 an aid, benefit, or service that is not as effective in according 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;

(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 no 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—

(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.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(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.

§§ 2490.131–2490.139 [Reserved]

§ 2490.140 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 1614, shall apply to employment in federally conducted programs or activities.

§§ 2490.141–2490.148 [Reserved]

§ 2490.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 2490.150, 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.

§ 2490.150 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;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) 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 § 2490.150(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 reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that 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*—(1) *General.* 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.

(2) *Historic preservation programs.* In meeting the requirements of § 2490.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 2490.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, 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, by May 26, 1994, 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 official responsible for implementation of the plan.

§ 2490.151 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.

§§ 2490.152–2490.159 [Reserved]

§ 2490.160 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 is necessary, 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 signage 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 used at each primary entrance of an 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 § 2490.160 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 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, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 2490.161–2490.169 [Reserved]

§ 2490.170 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 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director of Administration and Finance shall be responsible for coordinating implementation of this section. Complaints may be sent to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 2490.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57699, Oct. 26, 1993]

§§ 2490.171–2490.999 [Reserved]

PARTS 2491–2499 [RESERVED]

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

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PARTS 2500–2504 [RESERVED]

PART 2505—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

2505.1 Applicability.
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2505.3 To what extent are meetings of the Board open to the public?
2505.4 On what grounds may the Board close a meeting or withhold information?
2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?
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2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?

AUTHORITY: 5 U.S.C. 552b; 42 U.S.C. 12651c(c).

SOURCE: 64 FR 66403, Nov. 26, 1999, unless otherwise noted.

§ 2505.1 Applicability.

(a) This part implements the provisions of section 3(a) of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Corporation's Board of Directors, or to any subdivision of the Board that is authorized to act on its behalf. The Board of Directors may waive the provisions of this part to the extent authorized by law.

(b) Nothing in this part expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552), except that the exemptions set forth in § 2505.4 shall govern in the case of any request made pursuant to the Freedom of Information Act to copy or inspect the transcript, recording, or minutes described in § 2505.5.

(c) Nothing is this part authorizes the Corporation to withhold from any individual any record, including transcripts, recordings, or minutes required by this part, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a).

§ 2505.2 Definitions.

As used in this part:

(a) *Board* means the Board of Directors established pursuant to 42 U.S.C. 12651a, or any subdivision of the Board that is authorized to act on its behalf.

(b) *Chairperson* means the Member elected by the Board to serve as Chairperson.

(c) *General Counsel* means the Corporation's principal legal officer or other attorney acting at the designation of the Corporation's principal legal officer.

(d) *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651.

(e) *Meeting* means the deliberations of at least a quorum of the Corporation's Board of Directors where such deliberations determine or result in the joint conduct or disposition of official Corporation business. A meeting may be conducted under this part through telephone or similar communications equipment by means of which all participants may communicate with each other. The term meeting includes a portion thereof. The term meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the members individually by telephone.

(2) Action by a quorum of the Board to—

(i) Open or to close a meeting or to release or to withhold information pursuant to § 2505.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by § 2505.6(b); or

(iv) Change the subject-matter or the determinations to open or to close a publicly announced meeting under § 2505.7(b).

(3) A gathering for the purpose of receiving briefings from the Corporation's staff or expert consultants, provided that Members of the Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Corporation business on such matters.

(4) A gathering for the purpose of engaging in preliminary discussions or

exchanges of views that do not effectively predetermine official Corporation action on a particular matter.

(f) *Member* means a current member of the Corporation's Board of Directors.

(g) *Presiding Officer* means the Chairperson or, in the absence of the Chairperson, the Vice Chairperson of the Board of Directors or other member authorized to act in this capacity by the Board.

(h) *Quorum* means the number of Members authorized to conduct Corporation business pursuant to the Board's bylaws.

§ 2505.3 To what extent are meetings of the Board open to the public?

The Board shall conduct meetings, as defined in § 2505.2, in accordance with this part. Except as provided in § 2505.4, the Board's meetings shall be open to the public. The public is invited to attend all meetings of the Board that are open to the public but may not participate in the Board's deliberations at such meetings or record any meeting by means of electronic, photographic, or other device.

§ 2505.4 On what grounds may the Board close a meeting or withhold information?

The Board may close a meeting or withhold information that otherwise would be required to be disclosed under §§ 2505.5, 2505.6 and 2505.7 if it properly determines that an open meeting or disclosure is likely to—

(a) Disclose matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Corporation;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute—

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would—

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institution;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Corporation, except that this provision shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action; or

(j) Specifically concerning the Corporation's issuance of a subpoena or

the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?

(a) The Board may vote to close a meeting or withhold information pertaining to a meeting. Such action may be taken only when a majority of the entire membership of the Board votes to take such action. A separate vote shall be taken with respect to each action under § 2505.4. The Board may act by taking a single vote with respect to a series of meetings which are proposed to be closed to the public, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. Each Member's vote under this paragraph shall be recorded and no proxies shall be allowed.

(b) If your interests may be directly affected if a meeting is open you may request that the Board close the meeting on one of the grounds referred to in § 2505.4(e), (f), or (g). You should submit your request to the Corporation for National and Community Service, Office of the General Counsel, 250 E Street SW., Washington, DC 20525. The Board shall, upon the request of any one of its members, determine by recorded vote whether to grant your request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a meeting is to be closed to the public, the Board shall, within one working day, make available a full written explanation of its action closing the meeting and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemption relied upon. A copy of the certification shall be available for public inspection.

(e) For each closed meeting, the Board shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f)(1) For each closed meeting, with the exception of a meeting closed pursuant to § 2505.4(h) or (j), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting.

(2) For meetings that are closed pursuant to § 2505.4(h) or (j), the Board may maintain a set of minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any vote. All documents considered in connection with any action shall be identified in such minutes.

(3) The Corporation shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Corporation determines to contain information which may be properly withheld. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Corporation shall maintain the transcript, recording, or minutes for each closed meeting for at least two years or at least one year after the conclusion of any Corporation business acted upon at the meeting, whichever occurs later.

[64 FR 66403, Nov. 26, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

§ 2505.6 What are the procedures for making a public announcement of a meeting?

(a) For each meeting, the Board shall make a public announcement, at least one week before the meeting, of—

(1) The meeting's time and place;

(2) The matters to be considered;

(3) Whether the meeting is to be open or closed; and

(4) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if—

(1) The Board determines by recorded vote that Board business requires that the meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time and posted on the Corporation's home page.

(c) Immediately following a public announcement required by paragraph (a) of this section, the Corporation will submit for publication in the FEDERAL REGISTER a notice of the time, place, and subject matter of the meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting.

§ 2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?

(a) After there has been a public announcement of a meeting, the time or place of the meeting may be changed only if the Board publicly announces the change at the earliest practicable time. Such a change need not be determined by recorded vote.

(b) After there has been a public announcement of a meeting, the subject-matter of the meeting, or the determination of the Board to open or to close a meeting may be changed only when—

(1) The Board determines, by recorded vote, that Board business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member at the earliest practicable time.

(c) The deletion of any subject-matter previously announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

PART 2506—COLLECTION OF DEBTS

Subpart A—Introduction

Sec.

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Subpart F—Administrative Wage Garnishment

2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

SOURCE: 68 FR 16438, Apr. 4, 2003, unless otherwise noted.

Subpart A—Introduction

§ 2506.1 Why is the Corporation issuing these regulations?

(a) The Corporation is issuing these regulations to inform the public of procedures that may be used by the Corporation for the collection of debt.

(b) These regulations provide that the Corporation will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary offsets, administrative offsets, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that the Corporation has entered into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to the Corporation.

§ 2506.2 Under what authority does the Corporation issue these regulations?

(a) The Corporation is issuing the regulations in this part under the authority of 31 U.S.C. chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) The Corporation is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR chapter IX, parts 900–904. The Corporation adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for the Corporation's operations.

(c) The Corporation is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing

by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. The Corporation adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for the Corporation's operations.

(d) The Corporation is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these debt collection regulations are issued under the Corporation's authority under 42 U.S.C. 12651c(c).

§ 2506.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Administrative wage garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your disposable pay for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Chief Executive Officer means the Chief Executive Officer of the Corporation, or his or her designee.

Claim (see definition of *Debt* in this section).

Compromise means the settlement of a debt for less than the full amount owed.

Corporation means the Corporation for National and Community Service.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Cross-servicing agreement is a letter of agreement entered into between the Corporation and the Financial Management Service (FMS) of the Treasury in which the Corporation has authorized FMS to take all appropriate actions to enforce collection of debts or groups of debts referred to FMS by the Corporation. These debt collection services are provided by FMS on behalf of the Corporation in accordance with all statutory and regulatory requirements.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt and claim are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, ''debt'' and ''claim'' also include money, funds or property owed by a person to a State (including past-due support being enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Mariana Islands; or the Commonwealth of Puerto Rico.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms ''I,'' ''you,'' ''me,'' and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in the Corporation's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900–904.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Corporation may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Corporation or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

§ 2506.4 What types of debts are excluded from these regulations?

The following types of debts are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sections 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes the Corporation to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgment; and

(g) Unless otherwise stated, debts which have been transferred to the Treasury or referred to the DOJ will be collected in accordance with the procedures of those agencies.

§ 2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or

the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716; or any debtor from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 2506.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (see § 2506.3).

§ 2506.7 Why does the Corporation have to collect debts?

Federal agencies are required to try to collect claims or debts of the Federal Government for money, funds, or property arising out of the agency's activities.

§ 2506.8 What action might the Corporation take to collect debts?

(a) There are a number of actions that the Corporation is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (see subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, the Corporation transfers debts to the Treasury for collection or refers them to the DOJ for litigation (see §§ 2506.10 and 2506.11).

§ 2506.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (see § 2506.14);

(b) Inspect the records that the Corporation has used to determine that you owe a debt (see § 2506.14);

(c) Request review of the debt and possible payment options (see § 2506.17);

(d) Propose a voluntary repayment agreement (see § 2506.19); and/or

(e) Question if the debt is excluded from these regulations (see § 2506.5(b)).

Subpart B—General Provisions

§ 2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?

(a) The Corporation entered into a cross-servicing agreement on March 26, 1999, with Treasury Financial Management Services (FMS) that authorizes the Treasury to take the collection actions described in this part on behalf of the Corporation (see § 2506.3). The Corporation will refer debts or groups of debts to FMS for collection action. The debt collection procedures that the Treasury FMS uses are based on 31 U.S.C. chapter 37 and this part.

(b) The Corporation must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more, so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collection action. This is pursuant to § 901.3 of the FCCS.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

§ 2506.11 Will the Corporation refer debts to the Department of Justice?

The Corporation will refer to DOJ for litigation debts on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Corporation collection action, and within

the period for bringing a timely suit against the debtor.

§ 2506.12 Will the Corporation provide information to credit reporting agencies?

(a) The Corporation will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Corporation:

(1) Takes reasonable action to locate the debtor if a current address is not available;

(2) Provides the notice required under § 2506.14(a) if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, the Corporation provides a written statement to the reporting agency that all required actions have been taken. In addition, the Corporation thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate Corporation official. The credit reporting agency excludes the debt from its reports until the Corporation certifies in writing that the debt is valid.

(e) The Corporation may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

§ 2506.13 How will the Corporation contract for private collection services?

The Corporation uses the services of a private collection contractor when it determines that such use is in the Corporation's best interest. When the Corporation determines that there is a need to contract for private collection services, the Corporation:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of the Corporation in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to the Corporation, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?

(a) The Corporation will send you a written notice when we determine that you owe a debt to the Corporation. The notice will be hand-delivered or sent to you at the most current address known to the Corporation. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated Corporation official has reviewed the debt and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) The Corporation's policy concerning interest, penalty charges, and administrative costs (see § 2506.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable Corporation records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the designated Corporation official, for voluntary repayment of the debt (see § 2506.19);

(7) The address, telephone number, and name of the Corporation official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (see § 2506.15 for a fuller description of possible actions);

(9) That the Corporation may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review concerning the existence or amount of the debt, or the proposed schedule for offset of Federal employee salary payments (*see* § 2506.16).

(b) The Corporation will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (*see* § 2506.32), the Corporation excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?

The notice provided under § 2506.14 will advise you that, within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, the Corporation may enforce collection of the debt by any or all of the following methods:

(a) By transferring the debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (*see* § 2506.10);

(b) By referral to a credit reporting agency (*see* § 2506.12), private collection contractor (*see* § 2506.13), or the DOJ (*see* § 2506.11);

(c) If you are a Corporation employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (*see* subpart C of this part). The Corporation will specify the

amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than the Corporation, by initiating certification procedures to implement a salary offset by that Federal agency (*see* subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. The Corporation has the right to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale in the security instrument or a foreclosure. The Corporation will not follow the procedures in this paragraph (h) if the cost of disposing of the collateral will be disproportionate to its value.

§ 2506.16 What will the notice tell me about my opportunity for review of my debt?

The notice provided by the Corporation under §§ 2506.14 and 2506.15 will also advise you of the opportunity to obtain a review within the Corporation concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a Corporation official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the Corporation official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

§ 2506.17 What must I do to obtain a review of my debt, and how will the review process work?

(a) *Request for review.* (1) You have the right to request a review by the Corporation of the existence or the amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the Corporation official designated in the notice (*see* § 2506.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of the Corporation on or before the 60th calendar day following the date of the notice. Timely filing

will stay the commencement of collection procedures. The Corporation may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of the Corporation records related to the debt.* (1) If you want to inspect or copy the Corporation records related to the debt (*see* § 2506.14(a)(5)), you must send a letter to the Corporation official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated Corporation official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of the Corporation records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, the Corporation will request an administrative law judge, or hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require the Corporation to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, the Corporation has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (see paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which the Corporation received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If the Corporation is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) The Corporation may not issue a withholding order or take other action until the review (in whatever form) is held and a decision is rendered; and

(ii) If the Corporation previously issued a withholding order to the debtor's employer, the Corporation must suspend the withholding order beginning on the 61st day after the receipt of the review request and continuing until a review (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

§ 2506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?

(a) *Interest.* (1) The Corporation will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Corporation will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. The Corporation will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of the Corporation or established by a contract, repayment agreement, or statute. The Corporation will notify you of the basis for its finding when a different rate is necessary to protect the interests of the Corporation.

(3) The Chief Executive Officer may extend the 30-day period for payment without interest when he or she determines that such action is in the best interest of the Corporation. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Corporation will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Corporation will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Corporation.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The Corporation may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Chief Executive Officer may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of the Corporation.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Chief Executive Officer's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 2506.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to the Corporation that you be allowed to repay the debt through a voluntary repayment agreement in lieu of the Corporation taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

(1) Be in writing;

(2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) The Corporation will collect debts in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, the Corporation

may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(d) The Corporation will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Chief Executive Officer may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Chief Executive Officer's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on the Corporation unless it is in writing and signed by both you and the Chief Executive Officer. At the Corporation's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a debt.

§ 2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?

(a) The Chief Executive Officer may compromise, suspend, or terminate collection action on those debts owed to the Corporation that do not exceed $100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. The Corporation will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to the Corporation that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if this uncollected amount is at least $600.00.

§ 2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?

No, the failure of the Corporation to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

Subpart C—Salary Offset

§ 2506.30 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide the Corporation procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Corporation or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

§ 2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 2506.32 What are the Corporation's procedures for salary offset?

(a) The Corporation will coordinate salary deductions under this subpart as appropriate.

(b) If you are a Corporation employee who owes a debt to the Corporation, the Corporation's payroll office in Human Resources will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Corporation's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 2506.14(c)).

(e) Types of collection. (1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check, the Corporation may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Corporation's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 2506.33 How will the Corporation coordinate salary offsets with other agencies?

(a) *Responsibilities of the Corporation as the creditor agency (i.e. when the debtor owes a debt to the Corporation and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, the Corporation must submit a claim to a paying agency or disbursing official.

(1) In its claim, the Corporation must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Corporation's right to collect the debt first accrued;

(iv) That the Corporation's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That the Corporation has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, the Corporation's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Corporation may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) The Corporation will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Corporation must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the

Corporation. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Corporation may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer*. When an employee transfers from one paying agency to another paying agency, the Corporation will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Corporation will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of the Corporation as the paying agency (i.e., when the debtor owes a debt to another agency and is an employee of the Corporation).* (1) Complete claim. When the Corporation receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the Corporation sends the employee a written notice containing:

(i) A statement that the Corporation has received a certified claim from the creditor agency;

(ii) The amount of the debt;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When the Corporation receives an incomplete certification of debt from a creditor agency, the Corporation will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to the Corporation before the Corporation will take action to collect from the employee's current pay account.

(3) The Corporation is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Corporation to another paying agency. If, after the creditor agency has submitted the claim to the Corporation, the employee transfers from the Corporation to a different paying agency before the debt is collected in full, the Corporation will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?

(a) If the Corporation is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

Subpart D—Tax Refund Offset

§ 2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Corporation and:

(1) Is at least $25.00;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) With respect to which the Corporation has:

(i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which the Corporation has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

§ 2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?

(a) The Corporation's Accounting and Financial Management Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Corporation will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Corporation will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 2506.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) The Corporation will promptly notify the Treasury to correct data when the Corporation:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of the Corporation's intent to refer a debt to the Treasury for offset, the Corporation will also advise debtors of remedial actions (*see* §§ 2506.9 and 2506.14 through 2506.16 of this part) available to defer

the offset or prevent it from taking place.

Subpart E—Administrative Offset

§ 2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to the Corporation, or to any request from another Federal agency that the Corporation collect a debt you owe by offsetting your debt against a payment the Corporation owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). The Corporation will carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards. The regulations in this subpart are intended only to supplement the provisions of the FCCS.

(b) The Chief Executive Officer, after attempting to collect a debt you owe to the Corporation under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the debt, the intention of the Chief Executive Officer to collect the debt by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the Corporation related to the debt;

(3) An opportunity for a review within the Corporation of the decision of the Corporation related to the debt; and

(4) An opportunity to make a written agreement with the Chief Executive Officer to repay the amount of the debt.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to the Corporation's or the requesting Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to the Corporation by Federal agencies.

§ 2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?

The Chief Executive Officer may request that funds due and payable to you by another Federal agency instead be paid to the Corporation to satisfy a debt you owe to the Corporation. The Corporation will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, the Corporation may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, the Corporation will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That the Corporation has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

§ 2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?

(a) Any Federal agency may request that the Corporation administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Corporation will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Chief Executive Officer that offsetting funds payable to you by the Corporation in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, the Corporation may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 2506.53 When may the Corporation make an offset in an expedited manner?

The Corporation may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 2506.51 and 2506.52 if failure to take the offset would substantially jeopardize the Corporation's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

§ 2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?

Yes. Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

Subpart F—Administrative Wage Garnishment

§ 2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

The Corporation will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. The Corporation adopts, for purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11. This procedure allows the Corporation to garnish the disposable pay of a debtor without first obtaining a court order.

PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

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APPENDIX A TO PART 2507—FREEDOM OF INFORMATION ACT REQUEST LETTER (SAMPLE)
APPENDIX B TO PART 2507—FREEDOM OF INFORMATION ACT APPEAL FOR RELEASE OF INFORMATION (SAMPLE)

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

SOURCE: 63 FR 26489, May 13, 1998, unless otherwise noted.

§ 2507.1 Definitions.

As used in this part, the following definitions shall apply:

(a) *Act* means section 552 of Title 5, United States Code, sometimes referred to as the ''Freedom of Information Act'', and Pub. L. 104–231, 110 Stat. 3048, sometimes referred to as the ''Electronic Freedom of Information Act Amendments of 1996.''

(b) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, the Corporation is a Federal agency.

(c) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which the requester will put the records sought will be considered in determining whether the request is a commercial use request.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Educational institution* means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

(f) *Electronic data* means records and information (including e-mail) which are created, stored, and retrievable by electronic means.

(g) *Freedom of Information Act Officer (FOIA Officer)* means the Corporation official who has been delegated the authority to make the initial determination on whether to release or withhold records, and to assess, waive, or reduce fees in response to FOIA requests.

(h) *Non-commercial scientific institution* means an institution that is not operated substantially for purposes of furthering its own or someone else's business trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

(i) *Public interest* means the interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing.

(j) *Record* includes books, brochures, electronic mail messages, punch cards, magnetic tapes, cards, discs, paper tapes, audio or video recordings, maps, pamphlets, photographs, slides, microfilm, and motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation pursuant to Federal law or in connection with the transaction of public business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities. Record does not include objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulas, designs, drawings, or other items of valuable property. Record does not include books, magazines, pamphlets or other materials acquired solely for reference purposes. Record does not include personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Record does not include information stored within a computer for which there is no existing computer program for retrieval of the requested information. A record must exist and be in the possession and control of the Corporation at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 2507.5(d) with respect to creating a record in the electronic environment.

(k) *Representative of the news media* means a person who is actively gathering information for an entity organized to publish, broadcast or otherwise disseminate news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or

subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists will be treated as representatives of a new media entity if they can show a likelihood of publication through such an entity. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(l) *FOIA request* means a written request for Corporation records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency, an order from a court, or a fugitive from the law, that either explicitly or implicitly involves the FOIA, or this part. Written requests may be received by postal service or by facsimile.

(m) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (i.e., excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(n) *Search* means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

§ 2507.2 What is the purpose of this part?

The purpose of this part is to prescribe rules for the inspection and release of records of the Corporation for National and Community Service pursuant to the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, as amended. Information customarily furnished to the public in the regular course of the Corporation's official business, whether hard copy or electronic records which are available to the public through an established distribution system, or through the FEDERAL REGISTER, the National Technical Information Service, or the Internet, may continue to be furnished without processing under the provisions of the FOIA or complying with this part.

§ 2507.3 What types of records are available for disclosure to the public?

(a) (1) The Corporation will make available to any member of the public who requests them, the following Corporation records:

(i) All publications and other documents provided by the Corporation to the public in the normal course of agency business will continue to be made available upon request to the Corporation;

(ii) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases;

(iii) Statements of policy and interpretation adopted by the agency and not published in the FEDERAL REGISTER;

(iv) Administrative staff manuals and instructions to the staff that affect a member of the public; and

(v) Copies of all records, regardless of form or format, which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(2) Copies of a current index of the materials in paragraphs (a)(1)(i) through (v) of this section that are maintained by the Corporation, or any portion thereof, will be furnished or made available for inspection upon request.

(b) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Corporation may delete identifying details from materials furnished under this part.

(c) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished to the public at

the cost of duplication, provided, however, that, in the event no copy exists, the Corporation shall not be responsible for reprinting the document.

(d) All records of the Corporation which are requested by a member of the public in accordance with the procedures established in this part shall be duplicated for the requester, except to the extent that the Corporation determines that such records are exempt from disclosure under the Act.

(e) The Corporation will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data has been compiled previously and is available in the form of a record.)

(f) These records will be made available for public inspection and copying in the Corporation's reading room located at the Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525, during the hours of 9:30 a.m. to 4:00 p.m., Monday through Friday, except on official holidays.

(g) Corporation records will be made available to the public unless it is determined that such records should be withheld from disclosure under subsection 552(b) of the Act and or in accordance with this part.

[63 FR 26489, May 13, 1998, as amended at 81 FR 12600, Mar. 10, 2016]

§ 2507.4 How are requests for records made?

(a) *How made and addressed.* (1) Requests for Corporation records under the Act must be made in writing, and can be mailed, hand-delivered, or received by facsimile, to the FOIA Officer, Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525. (See Appendix A for an example of a FOIA request.) All such requests, and the envelopes in which they are sent, must be plainly marked ''FOIA Request''. Hand-delivered requests will be received between 9 a.m. and 4 p.m., Monday through Friday, except on official holidays. Although the Corporation maintains offices throughout the continental United States, all FOIA requests must be submitted to the Corporation's Headquarters office in Washington, DC.

(2) Corporation records that are available in the Corporation's reading room will also be made available for public access through the Corporation's ''electronic reading room'' internet site. The following address is the Corporation's Internet Web site: *http://www.nationalservice.gov*.

(b) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Corporation personnel to locate the records with reasonable effort, and without unreasonable burden to or disruption of Corporation operations. Among the kinds of identifying information which a requester may provide are the following:

(1) The name of the specific program within the Corporation which may have produced or may have custody of the record (e.g., AmeriCorps*State/National Direct, AmeriCorps*NCCC (National Civilian Community Corps), AmeriCorps*VISTA (Volunteers In Service To America), Learn and Serve America, National Senior Service Corps (NSSC), Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), Senior Companion Program (SCP), and HUD Hope VI);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or an approximate time period to which it refers or relates;

(4) The type of record (e.g. contract, grant or report);

(5) The name(s) of Corporation personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(c) *Agreement to pay fees.* The filing of a request under this section shall be deemed to constitute an agreement by the requester to pay all applicable fees, up to $25.00, unless a waiver of fees is sought in the request letter. When filing a request, a requester may agree to pay a greater amount, if applicable. (See § 2507.8 for further information on fees.)

[63 FR 26489, May 13, 1998, as amended at 81 FR 12600, Mar. 10, 2016]

§ 2507.5 How does the Corporation process requests for records?

(a) *Initial processing.* Upon receipt of a request for agency records, the FOIA Officer will make an initial determination as to whether the requester has reasonably described the records being sought with sufficient specificity to determine which Corporation office may have possession of the requested records. The office head or his or her designees shall determine whether the description of the record(s) requested is sufficient to permit a determination as to existence, identification, and location. It is the responsibility of the FOIA Officer to provide guidance and assistance to the Corporation staff regarding all FOIA policies and procedures. All requests for records under the control and jurisdiction of the Office of the Inspector General will be forwarded to the Inspector General, through the FOIA Officer, for the Corporation's initial determination and reply to the requester.

(b) *Insufficiently identified records.* On making a determination that the description contained in the request does not reasonably describe the records being sought, the FOIA Officer shall promptly advise the requester in writing or by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record. The requester may submit an amended request providing the necessary additional identifying information. Receipt of an amended request shall start a new 20 day period in which the Corporation will respond to the request.

(c) *Furnishing records.* The Corporation is required to furnish only copies of what it has or can retrieve. It is not compelled to create new records or do statistical computations. For example, the Corporation is not required to write a new program so that a computer will print information in a special format. However, if the requested information is maintained in computerized form, and it is possible, without inconvenience or unreasonable burden, to produce the information on paper, the Corporation will do this if this is the only feasible way to respond to a request. The Corporation is not required to perform any research for the requester. The Corporation reserves the right to make a decision to conserve government resources and at the same time supply the records requested by consolidating information from various records rather than duplicating all of them. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, the Corporation will provide the printout. The Corporation is only required to furnish one copy of a record.

(d) *Format of the disclosure of a record.* The requester, not the Corporation, will be entitled to choose the form of disclosure when multiple forms of a record already exist. Any further request for a record to be disclosed in a new form or format will have to be considered by the Corporation, on a case-by-case basis, to determine whether the records are ''readily reproducible'' in that form or format with ''reasonable efforts'' on the part of the Corporation. The Corporation shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of replying to a FOIA request.

(e) *Release of record.* Upon receipt of a request specifically identifying existing Corporation records, the Corporation shall, within 20 days (excepting Saturdays, Sundays, and legal public holidays), either grant or deny the request in whole or in part, as provided in this section. Any notice of denial in whole or in part shall require the FOIA Officer to inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth in § 2507.7. If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, as appropriate, to withhold the record as being exempt from mandatory disclosure under the Act.

(f) *Form and content of notice granting a request.* The Corporation shall provide written notice of a determination to grant access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. This will be done either by providing a copy

of the record to the requester or by making the record available for inspection at a reasonable time and place. If the record cannot be provided at the time of the initial response, the Corporation shall make such records available promptly. Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

(g) *Form and content of notice denying request.* The Corporation shall notify the requester in writing of the denial of access within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for denial, including the specific exemption(s) under the Act on which the Corporation has relied in denying each document that was requested;

(3) A statement that the denial may be appealed under §2507.7, and a description of the requirements of that §2507.7;

(4) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§2507.6 Under what circumstances may the Corporation extend the time limits for an initial response?

The time limits specified for the Corporation's initial response in §2507.5, and for its determination on an appeal in §2507.7, may be extended by the Corporation upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Corporation will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this section may include the following:

(a) Time necessary to search for and collect requested records from field offices of the Corporation;

(b) Time necessary to locate, collect and review voluminous records; or

(c) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of the Corporation which have an interest in the request; or with a submitter of business information having an interest in the request.

§2507.7 How does one appeal the Corporation's denial of access to records?

(a) *Right of appeal.* A requester has the right to appeal a partial or full denial of an FOIA request. The appeal must be put in writing and sent to the reviewing official identified in the denial letter. The requester must send the appeal within 60 days of the letter denying the appeal.

(b) *Contents of appeal.* The written appeal may include as much or as little information as the requester wishes for the basis of the appeal.

(c) *Review process.* The Chief Operating Officer (COO) is the designated official to act on all FOIA appeals. The COO's determination of an appeal constitutes the Corporation's final action. If the appeal is granted, in whole or in part, the records will be made available for inspection or sent to the requester, promptly, unless a reasonable delay is justified. If the appeal is denied, in whole or in part, the COO will state the reasons for the decision in writing, providing notice of the right to judicial review. A decision will be made on the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), from the date the appeal was received by the COO.

(d) *When appeal is required.* If a requester wishes to seek review by a court of an unfavorable determination, an appeal must first be submitted under this section.

§2507.8 How are fees determined?

(a) *Policy.* It is the policy of the Corporation to provide the widest possible access to releasable Corporation records at the least possible cost. The purpose of the request is relevant to the fees charged.

(b) *Types of request.* Fees will be determined by category of requests as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and non-commercial scientific institutions.* When a request for records is made by an educational or non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges may be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages. Whenever the total fee calculated is $18.00 or less, no fee shall be charged.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges may be assessed to cover the cost of reproduction alone, excluding the charges for reproduction of the first 100 pages. Whenever the total fee calculated is $18.00 or less, no fee shall be charged.

(4) *Other requests.* When other requests for records are made which do not fit the three preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a) which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request.) Whenever the total fee calculated is $18.00 or less, no fee shall be charged to the requester.

(c) *Direct costs.* Fees assessed shall provide only for recovery of the Corporation's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) *Charging of fees.* The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of $0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of $4.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of $7.00 per quarter hour.

(4) Where the time of managerial personnel is required, the fee shall be $10.25 for each quarter hour of time spent by such managerial personnel.

(5) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(6) *Charges for non-release.* Charges may be assessed for search and review time, even if the Corporation fails to locate records responsive to a request or if records located are determined to be exempt from disclosure.

(e) *Consent to pay fees.* In the event that a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed $25.00, or will exceed the limit specified in the request, the requester shall be promptly notified in writing. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to

be responsible for paying the anticipated costs. Such a request shall be deemed to have been received by the Corporation upon the date of receipt of the amended request.

(f) *Advance payment.* (1) Advance payment of assessable fees are not required from a requester unless:

(i) The Corporation estimates or determines that assessable charges are likely to exceed $250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Corporation shall notify the requester of the likely cost and obtain written assurance of full payment.)

(ii) A requester has previously failed to pay a FOIA fee charged in a timely fashion (i.e., within 30 days of the date of the billing).

(2) When the Corporation acts under paragraphs (f)(1)(i) or (ii) of this section, the administrative time limits prescribed in §2507.5(a) and (b) will begin to run only after the Corporation has received fee payments or assurances.

(g) *Interest on non-payment.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Corporation may use the authorization of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including disclosure to consumer reporting agencies and the use of collection agencies, to encourage payment of delinquent fees.

(h) *Aggregating requests.* Where the Corporation reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Corporation may aggregate those requests and charge accordingly. The Corporation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Corporation will aggregate them only where there exists a solid basis for determining that aggregation is warranted under the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Making payment.* Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to ''Corporation for National and Community Service''. A receipt for any fees paid will be provided upon written request.

(j) *Fee processing.* No fee shall be charged if the administrative costs of collection and processing of such fees are equal to or do not exceed the amount of the fee.

(k) *Waiver or reduction of fees.* A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. Upon receipt of such a request, the FOIA Officer will determine whether a fee waiver or reduction should be granted.

(1) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation, and it is not primarily in the commercial interest of the requester. The Corporation shall consider the following factors in determining whether a waiver or reduction of fees will be granted:

(i) Does the requested information concern the operations or activities of the Corporation?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Corporation's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester?

(2) In applying the criteria in paragraph (k)(1) of this section, the Corporation will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and that interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction may be granted.

(3) When a fee waiver application has been included in a request for records, the request shall not be considered officially received until a determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received in writing by the Corporation.

§ 2507.9 What records will be denied disclosure under this part?

Since the policy of the Corporation is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a Corporation record made under the provisions of the FOIA may be denied when:

(a) The record is subject to one or more of the exemptions of the FOIA.

(b) The record has not been described clearly enough to enable the Corporation staff to locate it within a reasonable amount of effort by an employee familiar with the files.

(c) The requestor has failed to comply with the procedural requirements, including the agreement to pay any required fee.

(d) For other reasons as required by law, rule, regulation or policy.

§ 2507.10 What records are specifically exempt from disclosure?

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section. The following categories are examples of records maintained by the Corporation which, under the provision of 5 U.S.C. 552(b), are exempted from disclosure:

(a) *Records required to be withheld under criteria established by an Executive Order in the interest of national defense and policy and which are in fact properly classified pursuant to any such Executive Order.* Included in this category are records required by Executive Order No. 12958 (3 CFR, 1995 Comp., p. 333), as amended, to be classified in the interest of national defense or foreign policy.

(b) *Records related solely to internal personnel rules and practices.* Included in this category are internal rules and regulations relating to personnel management operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant functions of the Corporation.

(c) Records specifically exempted from disclosure by statute.

(d) *Information of a commercial or financial nature including trade secrets given in confidence.* Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) *Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Corporation.* Included in this category are memoranda, letters, inter-agency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records meant to be used as part of deliberations by staff, or ordinarily used in arriving at policy determinations and decisions.

(f) *Personnel, medical and similar files.* Included in this category are personnel and medical information files of staff, individual national service applicants and participants, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) *Investigatory files.* Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

§ 2507.11 What are the procedures for the release of commercial business information?

(a) *Notification of business submitter.* The Corporation shall promptly notify a business submitter of any request for Corporation records containing business information. The notice shall either specifically describe the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(b) *Business submitter reply.* The Corporation shall afford a business submitter 10 working days to object to disclosure, and to provide the Corporation with a written statement specifying the grounds and arguments why the information should be withheld under Exemption (b)(4) of the Act.

(c) *Considering and balancing respective interests.* (1) The Corporation shall carefully consider and balance the business submitter's objections and specific grounds for nondisclosure against such factors as:

(i) The general custom or usage in the occupation or business to which the information relates that it be held confidential; and

(ii) The number and situation of the individuals who have access to such information; and

(iii) The type and degree of risk of financial injury to be expected if disclosure occurs; and

(iv) The length of time such information should be regarded as retaining the characteristics noted in paragraphs (c)(1) (i) through (iii) of this section in determining whether to release the requested business information.

(2)(i) Whenever the Corporation decides to disclose business information over the objection of a business submitter, the Corporation shall forward to the business submitter a written notice of such decision, which shall include:

(A) The name, and title or position, of the person responsible for denying the submitter's objection;

(B) A statement of the reasons why the business submitter's objection was not sustained;

(C) A description of the business information to be disclosed; and

(D) A specific disclosure date.

(ii) The notice of intent to disclose business information shall be mailed by the Corporation not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(d) *When notice to business submitter is not required.* The notice to business submitter shall not apply if:

(1) The Corporation determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(e) *Notice of suit for release.* Whenever a requester brings suit to compel disclosure of business information, the Corporation shall promptly notify the business submitter.

§ 2507.12 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.*).

APPENDIX A TO PART 2507—FREEDOM OF INFORMATION ACT REQUEST LETTER (SAMPLE)

Freedom of Information Act Officer _____
Name of Agency _____
Address of Agency _____
City, State, Zip Code _____

Re: Freedom of Information Act Request.

Dear_____: This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

[Sample requester descriptions]

—A representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.) and this request is made as part of news gathering and not for commercial use.

—Affiliated with an educational or noncommercial scientific institution, and this request is not for commercial use.

—An individual seeking information for personal use and not for commercial use.

—Affiliated with a private corporation and am seeking information for use in the company's business.

[Optional] I am willing to pay fees for this request up to a maximum of $_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in my commercial interest. [Include a specific explanation.]

In order to help you determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

Thank you for your consideration of this request.

Sincerely,

Name _____
Address _____
City, State, Zip Code _____
Telephone Number [Optional] _____

APPENDIX B TO PART 2507—FREEDOM OF INFORMATION ACT APPEAL FOR RELEASE OF INFORMATION (SAMPLE)

Appeal Officer _____
Name of Agency _____
Address of Agency _____
City, State, Zip Code _____

Re: Freedom of Information Act Appeal.

Dear_____: This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number _____. On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because * * *.

[Optional] *Respond for waiver of fees.* I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

(Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,

Name _____
Address _____
City, State, Zip Code _____
Telephone Number [Optional] _____

PART 2508—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

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AUTHORITY: 5 U.S.C. 552a; 42 U.S.C. 12501 *et seq.;* 42 U.S.C. 4950 *et seq.*

SOURCE: 64 FR 19294, Apr. 20, 1999, unless otherwise noted.

§ 2508.1 Definitions.

(a) *Amend* means to make a correction to, or expunge any portion of, a record about an individual which that individual believes is not accurate, relevant, timely, or complete.

(b) *Appeal Officer* means the individual delegated the responsibility to act on all appeals filed under the Privacy Act.

(c) *Chief Executive Officer* means the Head of the Corporation.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence.

(f) *Maintain* means to collect, use, store, disseminate or any combination of these recordkeeping functions; exercise of control over and therefore, responsibility and accountability for, systems of records.

(g) *Personnel record* means any information about an individual that is maintained in a system of records by the Corporation that is needed for personnel management or processes such as staffing, employment development, retirement, grievances, and appeals.

(h) *Privacy Act Officer* means the individual delegated the authority to allow access to, the release of, or the withholding of records pursuant to an official Privacy Act request. The Privacy Act Officer is further delegated the authority to make the initial determination on all requests to amend records.

(i) *Record* means any document or other information about an individual maintained by the agency whether collected or grouped, and including, but not limited to, information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information that contains the name or other personal identification number, symbol, etc. assigned to such individual.

(j) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(k) *System of records* means a group of any records under the maintenance and control of the Corporation from which information is retrieved by use of the name of an individual or by some personal identifier of the individual.

§ 2508.2 What is the purpose of this part?

The purpose of this part is to set forth the basic policies of the Corporation governing the maintenance of its system of records which contains personal information concerning its employees as defined in the Privacy Act (5 U.S.C. 552a). Records included in this part are those described in aforesaid act and maintained by the Corporation and/or any component thereof.

§ 2508.3 What is the Corporation's Privacy Act policy?

It is the policy of the Corporation to protect, preserve, and defend the right of privacy of any individual about whom the Corporation maintains personal information in any system of records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. Further, it is the policy of the Corporation to maintain its records in such a manner that the information contained therein is, and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subjects of such records.

§ 2508.4 When can Corporation records be disclosed?

(a) (1) The Corporation will not disclose any record that is contained in its system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be:

(i) To employees of the Corporation who maintain the record and who have a need for the record in the performance of their official duties;

(ii) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552);

(iii) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER;

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(v) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the Corporation to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General or any of his or her authorized representatives, in the course of the performance of official duties in the General Accounting Office;

(xi) Pursuant to an order of a court of competent jurisdiction served upon the Corporation pursuant to 45 CFR 1201.3, and provided that if any such record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the Corporation must make a reasonable effort to notify the individual to whom the record pertains of such disclosure;

(xii) To a contractor, expert, or consultant of the Corporation (or an office within the Corporation) when the purpose of the release to perform a survey, audit, or other review of the Corporation's procedures and operations; and

(xiii) To a consumer reporting agency in accordance with section 3711(f) of title 31.

§ 2508.5 When does the Corporation publish its notice of its system of records?

The Corporation shall publish annually a notice of its system of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER; provided, however, that such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Corporation.

§ 2508.6 When will the Corporation publish a notice for new routine uses of information in its system of records?

At least 30 days prior to publication of information under the preceding section, the Corporation shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of the systems which the Corporation maintains, such request may be sent to the following office: Office of the General Counsel, Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

§ 2508.7 To whom does the Corporation provide reports regarding changes in its system of records?

The Corporation shall provide to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

§ 2508.8 Who is responsible for establishing the Corporation's rules of conduct for Privacy Act compliance?

(a) The Chief Executive Officer shall ensure that all persons involved in the design, development, operation or maintenance of any system of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the civil remedies provided under 5 U.S.C. 552a(g)(1) and the fact that the Corporation may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and this regulation.

(b) The Chief Executive Officer shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records, and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

§ 2508.9 What officials are responsible for the security, management and control of Corporation record keeping systems?

(a) The Director of Administration and Management Services shall have overall control and supervision of the security of all systems of records and shall be responsible for monitoring the security standards set forth in this regulation.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the Corporation and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

§ 2508.10 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?

The Chief Executive Officer has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards

must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Corporation.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked metal filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category shall also be maintained in locked metal filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Corporation, for routine uses as defined in §2508.4 as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the Corporation to persons needing such records in the performance of their official duties or routine uses as defined in §2508.4, or such other uses as provided herein, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the Director, Administration and Management Services.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties require work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a written log, as directed by the Director, Administration and Management Services. The written log shall be maintained at all times.

(6) The Corporation shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning or in the case of tapes or discs, degaussing, in accordance with any regulations now or hereafter proposed by the General Services Administration or other appropriate authority.

§ 2508.11 How shall offices maintaining a system of records be accountable for those records to prevent unauthorized disclosure of information?

(a) Each office maintaining a system of records shall account for all records

within such system by maintaining a written log in the form prescribed by the Director, Administration and Management Services, containing the following information:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the Corporation in the normal course of their duties, or pursuant to the provisions of the Freedom of Information Act, need not be accounted for.

(2) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(3) The accounting shall be maintained in accordance with a system of records approved by the Director, Administration and Management Services, as sufficient for the purpose but in any event sufficient to permit the construction of a listing of all disclosures at appropriate periodic intervals.

(4) The accounting shall reference any justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(5) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof, and need not be maintained within a system of records.

(6) Any subject individual may request access to an accounting of disclosures of a record. The subject individual shall make a request for access to an accounting in accordance with § 2508.13. An individual will be granted access to an accounting of the disclosures of a record in accordance with the procedures of this subpart which govern access to the related record. Access to an accounting of a disclosure of a record made under § 2508.13 may be granted at the discretion of the Director, Administration and Management Services.

§ 2508.12 What are the contents of the systems of record that are to be maintained by the Corporation?

(a) The Corporation shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(b) In situations in which the information may result in adverse determinations about such individual's rights, benefits and privileges under any Federal program, all information placed in a system of records shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(c) Each form or other document that an individual is expected to complete in order to provide information for any system of records shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 2508.6.

(4) The effect on the individual, if any, of not providing all or part of the required or requested information.

(d) Records maintained in any system of records used by the Corporation to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided, however, that the Corporation shall not be required to update or keep current retired records.

(e) Before disseminating any record about any individual to any person other than an employee in the Corporation, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), the Corporation shall make reasonable efforts to ensure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for Corporation purposes.

(f) Under no circumstances shall the Corporation maintain any record about

any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(g) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the Corporation shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

§ 2508.13 What are the procedures for acquiring access to Corporation records by an individual about whom a record is maintained?

(a) Any request for access to records from any individual about whom a record is maintained will be addressed to the Corporation for National and Community Service, Office of the General Counsel, Attn: Privacy Act Officer, 250 E Street SW., Washington, DC 20525, or delivered in person during regular business hours, whereupon access to his or her record, or to any information contained therein, if determined to be releasable, shall be provided.

(b) If the request is made in person, such individual may, upon his or her request, be accompanied by a person of his or her choosing to review the record and shall be provided an opportunity to have a copy made of any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon the proper written consent of such individual.

(d) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Corporation. Mailed requests or personal requests for documents in storage or otherwise not immediately available, will be acknowledged within 10 working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of a record, the following procedures shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless, in the judgment of the Corporation, access to such records might have an adverse effect upon such individual. When such determination has been made, the Corporation may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his or her professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise exempted by the provisions of the Privacy Act, shall be removed from the record before disclosure to any individual to whom the record pertains.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

§ 2508.14 What are the identification requirements for individuals who request access to records?

The Corporation shall require reasonable identification of all individuals who request access to records to ensure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license, etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity, acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) In the event that disclosure is requested by mail, the Corporation may request such information as may be necessary to reasonably ensure that the individual making such request is properly identified. In certain cases, the Corporation may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation

or identification, the Corporation may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the Corporation may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

§ 2508.15 What are the procedures for requesting inspection of, amendment or correction to, or appeal of an individual's records maintained by the Corporation other than that individual's official personnel file?

(a) A request for inspection of any record shall be made to the Director, Administration and Management Services. Such request may be made by mail or in person provided, however, that requests made in person may be required to be made upon a form provided by the Director of Administration and Management Services who shall keep a current list of all systems of records maintained by the Corporation and published in accordance with the provisions of this regulation. However, the request need not be in writing if the individual makes his or her request in person. The requesting individual may request that the Corporation compile all records pertaining to such individual at any named Service Center/State Office, AmeriCorps*NCCC Campus, or at Corporation Headquarters in Washington, DC, for the individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him or her in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

(b) Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him or her.

(1) In the event an individual, after examination of his or her record, desires to request an amendment or correction of such records, the request must be submitted in writing and addressed to the Corporation for National and Community Service, Office of the General Counsel, Attn: Privacy Act Officer, 250 E Street SW., Washington, DC 20525. In his or her written request, the individual shall specify:

(i) The system of records from which the record is retrieved;

(ii) The particular record that he or she is seeking to amend or correct;

(iii) Whether he or she is seeking an addition to or a deletion or substitution of the record; and,

(iv) His or her reasons for requesting amendment or correction of the record.

(2) A request for amendment or correction of a record will be acknowledged within 10 working days of its receipt unless the request can be processed and the individual informed of the Privacy Act Officer's decision on the request within that 10 day period.

(3) If the Privacy Act Officer agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, the record will be corrected or amended. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Corporation's function for which the record was provided or is maintained. In either case, the individual will be informed in writing of the amendment, correction, or deletion and, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(4) If the Privacy Act Officer does not agree that the record should be amended or corrected, the individual will be informed in writing of the refusal to amend or correct the record. He or she will also be informed that he or she may appeal the refusal to amend or correct his or her record in accordance with § 2508.17.

(5) Requests to amend or correct a record governed by the regulation of another government agency will be forwarded to such government agency for

processing and the individual will be informed in writing of the referral.

(c) In the event an individual disagrees with the Privacy Act Officer's initial determination, he or she may appeal such determination to the Appeal Officer in accordance with § 2508.17. Such request for review must be made within 30 days after receipt by the requestor of the initial refusal to amend.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12601, Mar. 10, 2016]

§ 2508.16 What are the procedures for filing an appeal for refusal to amend or correct records?

(a) In the event an individual desires to appeal any refusal to correct or amend records, he or she may do so by addressing, in writing, such appeal to the Corporation for National and Community Service, Office of the Chief Operating Officer, Attn: Appeal Officer, 250 E Street SW., Washington, DC 20525. Although there is no time limit for such appeals, the Corporation shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) An appeal will be completed within 30 working days from its receipt by the Appeal Officer; except that, the appeal authority may, for good cause, extend this period for an additional 30 days. Should the appeal period be extended, the individual appealing the original refusal will be informed in writing of the extension and the circumstances of the delay. The individual's request for access to or to amend or correct the record, the Privacy Act Officer's refusal to amend or correct the record, and any other pertinent material relating to the appeal will be reviewed. No hearing will be held.

(c) If the Appeal Officer determines that the record that is the subject of the appeal should be amended or corrected, the record will be amended or corrected and the individual will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(d) If the appeal is denied, the subject individual will be informed in writing:

(1) Of the denial and reasons for the denial;

(2) That he or she has a right to seek judicial review of the denial; and

(3) That he or she may submit to the Appeal Officer a concise statement of disagreement to be associated with the disputed record and disclosed whenever the record is disclosed.

(e) Whenever an individual submits a statement of disagreement to the Appeal Officer in accordance with paragraph (d)(3) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of the subject individual's statement of disagreement will be disclosed with the record. If the appeal authority deems it appropriate, a concise statement of the Appeal Officer's reasons for denying the individual's appeal may also be disclosed with the record. While the individual will have access to this statement of reasons, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of the individual's statement of disagreement, as well as the statement, if any, of the Appeal Officer's reasons for denying the individual's appeal.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12601, Mar. 10, 2016]

§ 2508.17 When shall fees be charged and at what rate?

(a) No fees shall be charged for search time or for any other time expended by the Corporation to review or produce a record except where an individual requests that a copy be made of the record to which he or she is granted access. Where a copy of the record must be made in order to provide access to the record (e.g., computer printout where no screen reading is available), the copy will be made available to the individual without cost.

(b) The applicable fee schedule is as follows:

(1) Each copy of each page, up to 8½″ × 14″, made by photocopy or similar process is $0.10 per page.

(2) Each copy of each microform frame printed on paper is $0.25.

(3) Each aperture card is $0.25.

(4) Each 105-mm fiche is $0.25.

(5) Each 100′ foot role of 35-mm microfilm is $7.00.

(6) Each 100′ foot role of 16-mm microfilm is $6.00.

(7) Each page of computer printout without regard to the number of carbon copies concurrently printed is $0.20.

(8) Copying records not susceptible to photocopying (e.g., punch cards or magnetic tapes), at actual cost to be determined on a case-by-case basis.

(9) Other copying forms (e.g., typing or printing) will be charged at direct costs, including personnel and equipment costs.

(c) All copying fees shall be paid by the individual before the copying will be undertaken. Payments shall be made by check or money order payable to the ''Corporation for National and Community Service,'' and provided to the Privacy Act Officer processing the request.

(d) A copying fee shall not be charged or collected, or alternatively, it may be reduced, when it is determined by the Privacy Act Officer, based on a petition, that the petitioning individual is indigent and that the Corporation's resources permit a waiver of all or part of the fee. An individual is deemed to be indigent when he or she is without income or lacks the resources sufficient to pay the fees.

(e) Special and additional services provided at the request of the individual, such as certification or authentication, postal insurance and special mailing arrangement costs, will be charged to the individual.

(f) A copying fee totaling $5.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

§ 2508.18 What are the penalties for obtaining a record under false pretenses?

The Privacy Act provides, in pertinent part that:

(a) Any person who knowingly and willfully requests to obtain any record concerning an individual from the Corporation under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000 (5 U.S.C. 552a(I)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 2508.19 What Privacy Act exemptions or control of systems of records are exempt from disclosure?

(a) Certain systems of records that are maintained by the Corporation are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k) of 5 U.S.C. 552a.

(1) Exemption of Inspector General system of records. Pursuant to, and limited by 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General that contains the Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6)(7), (9), (10), and (11), and (I), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains information pertaining to criminal law enforcement investigations.

(2) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General that contains the Investigative Files shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains investigatory materials compiled for law enforcement purposes.

(b) Exemptions to the General Counsel system of records. Pursuant to, and limited by 5 U.S.C. 552a(d)(5), the system of records maintained by the Office of the General Counsel that contains the Legal Office Litigation/Correspondence Files shall be exempted from the provisions of 5 U.S.C. 552a(d)(5), and 45 CFR 2508.4, insofar as the system contains information compiled in reasonable anticipation of a civil action or proceeding.

§ 2508.20 What are the restrictions regarding the release of mailing lists?

An individual's name and address may not be sold or rented by the Corporation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

PART 2510—OVERALL PURPOSES AND DEFINITIONS

Sec.

2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?
2510.20 Definitions.

AUTHORITY: 42 U.S.C. 12511.

§ 2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (the Corporation). The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nations educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. The Corporation will undertake activities and provide assistance to States and other eligible entities to support national and community service programs and to achieve other purposes consistent with its mission.

[59 FR 13783, Mar. 23, 1994]

§ 2510.20 Definitions.

The following definitions apply to terms used in 45 CFR parts 2510 through 2550:

Act. The term *Act* means the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*).

Administrative costs. The term *administrative costs* means general or centralized expenses of overall administration of an organization that receives assistance under the Act and does not include program costs.

(1) For organizations that have an established indirect cost rate for Federal awards, administrative costs mean those costs that are included in the organization's indirect cost rate. Such costs are generally identified with the organization's overall operation and are further described in 2 CFR part 200.

(2) For organizations that do not have an established indirect cost rate for Federal awards, administrative costs include:

(i) Costs for financial, accounting, auditing, contracting, or general legal services except in unusual cases when they are specifically approved in writing by the Corporation as program costs.

(ii) Costs for internal evaluation, including overall organizational management improvement costs (except for independent evaluations and internal evaluations of a program or project).

(iii) Costs for general liability insurance that protects the organization(s) responsible for operating a program or project, other than insurance costs solely attributable to a program or project.

Adult Volunteer. (1) The term *adult volunteer* means an individual, such as an older adult, an individual with disability, a parent, or an employee of a business of public or private nonprofit organization, who—

(i) Works without financial remuneration in an educational institution to assist students of out-of-school youth; and

(2) Is beyond the age of compulsory school attendance in the State in which the educational institution is located.

AmeriCorps. The term *AmeriCorps* means the combination of all AmeriCorps programs and participants.

AmeriCorps educational award. The term *AmeriCorps educational award* means a national service educational award described in section 147 of the Act.

AmeriCorps participant. The term *AmeriCorps participant* means any individual who is serving in—

(1) An AmeriCorps program;

(2) An approved AmeriCorps position; or

(3) Both.

AmeriCorps program. The term *AmeriCorps program* means—

(1) Any program that receives approved AmeriCorps positions;

(2) Any program that receives Corporation funds under section 121 of the Act; or

(3) Both.

Approved AmeriCorps position. The term *approved AmeriCorps position* means an AmeriCorps position for which the Corporation has approved the provision of an AmeriCorps educational award as one of the benefits to be provided for successful service in the position.

Approved Silver Scholar position. The term *approved Silver Scholar position* means a Silver Scholar position for which the Corporation has approved a Silver Scholar education award.

Approved Summer of Service position. The term *approved Summer of Service position* means a Summer of Service position for which the Corporation has approved a Summer of Service education award.

Carry out. The term *carry out,* when used in connection with an AmeriCorps program described in section 122 of the Act, means the planning, establishment, operation, expansion, or replication of the program.

Chief Executive Officer. The term *Chief Executive Officer,* except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 193 of the Act.

Children. The term *children* means individuals 17 years of age and younger.

Community-based agency. The term *community-based agency* means a private nonprofit organization (including a church or other religious entity) that—

(1) Is representative of a community or a significant segment of a community; and

(2) Is engaged in meeting educational, public safety, human, or environmental community needs.

Community-based entity. The term community-based entity means a public or private nonprofit organization that—

(1) Has experience with meeting unmet human, educational, environmental, or public safety needs; and

(2) Meets other such criteria as the Chief Executive Officer may establish.

Corporation. The term *Corporation* means the Corporation for National and Community Service established under section 191 of the Act.

Economically disadvantaged. The term *economically disadvantaged,* with respect to an individual, has the same meaning as such term as defined in the Job Training Partnership Act (29 U.S.C. 1503(8)).

Elementary school. The term *elementary school* has the same meaning given the term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

Empowerment zone. The term *empowerment zone* means an area designated as an empowerment zone by the Secretary of the Department of Housing and Urban Development or the Secretary of the Department of Agriculture.

Grantmaking entity. (1) For school-based programs, the term *grantmaking entity* means a public or private nonprofit organization experienced in service-learning that—

(i) Submits an application to make grants for school-based service-learning programs in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

(2) For community-based programs, the term *grantmaking entity* means a qualified organization that—

(i) Submits an application to make grants to qualified organizations to implement, operate, expand, or replicate community-based service programs that provide for educational, public safety, human, or environmental service by school-age youth in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

Higher Education partnerships. The term *higher education partnership* means one or more public or private nonprofit organizations, or public agencies, including States, and one or more institutions of higher education

that have entered into a written agreement specifying the responsibilities of each partner.

Indian. The term *Indian* means a person who is a member of an Indian tribe, or is a ''Native'', as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

Indian lands. The term *Indian lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

Indian tribe. The term *Indian tribe* means—

(1) An Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'', 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)); and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (1) of this definition.

Individual with a disability. Except as provided in section 175(a) of the Act, the term *individual with a disability* has the meaning given the term in section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)), which includes individuals with cognitive and other mental impairments, as well as individuals with physical impairments, who meet the criteria in that definition.

Infrastructure-building activities. The term *infrastructure-building activities* refers to activities that increase the capacity of organizations, programs and individuals to provide high quality service to communities.

Institution of higher education. The term *institution of higher education* has the same meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

Local educational agency (LEA). The term *local educational agency* has the same meaning given the term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

Local partnership. The term *local partnership* means a partnership, as defined in § 2510.20 of this chapter, that meets the eligibility requirements to apply for subgrants under § 2516.110 or § 2517.110 of this chapter.

National nonprofit. The term *national nonprofit* means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

National service laws. The term *national service laws* means the Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*).

Objective. The term *objective* means a desired accomplishment of a program.

Out-of-school youth. The term *out-of-school youth* means an individual who—

(1) Has not attained the age of 27;

(2) Has not completed college or its equivalent; and

(3) Is not enrolled in an elementary or secondary school or institution of higher education.

Participant. (1) The term *participant* means an individual enrolled in a program that receives assistance under the Act.

(2) A participant may not be considered to be an employee of the program in which the participant is enrolled.

(3) A participant may also be referred to by the term *member.*

Partnership. The term *partnership* means two or more entities that have entered into a written agreement specifying the partnership's goals and activities as well as the responsibilities, goals, and activities of each partner.

Partnership program. The term *partnership program* means a program through which an adult volunteer, a

public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

Program. The term program, unless the context otherwise requires, and except when used as part of the term academic program, means a program described in the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), in section 112(a) (other than a program referred to in paragraph (3)(B) of that section), 118A, or 118(b)(1), or subsection (a), (b), or (c) of section 122, or in paragraph (1) or (2) of section 152(b), section 198B, 198C, 198H, or 198K, or an activity that could be funded under section 179A, 198, 198O, 198P, or 199N.

Program costs. The term *program costs* means expenses directly related to a program or project, including their operations and objectives. Program costs include, but are not limited to:

(1) Costs attributable to participants, including: living allowances, insurance payments, and expenses for training and travel.

(2) Costs (including salary, benefits, training, travel) attributable to staff who recruit, train, place, support, coordinate, or supervise participants, or who develop materials used in such activities.

(3) Costs for independent evaluations and internal evaluations to the extent that the evaluations cover only the funded program or project.

(4) Costs, excluding those already covered in an organization's indirect cost rate, attributable to staff that work in a direct program or project support, operational, or oversight capacity, including, but not limited to: support staff whose functions directly support program or project activities; staff who coordinate and facilitate single or multi-site program and project activities; and staff who review, disseminate and implement Corporation guidance and policies directly relating to a program or project.

(5) Space, facility, and communications costs for program or project operations and other costs that primarily support program or project operations, excluding those costs that are already covered by an organization's indirect cost rate.

(6) Other allowable costs, excluding those costs that are already covered by an organization's indirect cost rate, specifically approved by the Corporation as directly attributable to a program or project.

Program sponsor. The term *program sponsor* means an entity responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects.

Project. The term *project* means an activity, or a set of activities, carried out through a program that receives assistance under the Act, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

Project sponsor. The term *project sponsor* means an organization, or other entity, that has been selected to provide a placement for a participant.

Qualified individual with a disability. The term *qualified individual with a disability* has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

Qualified organization. The term *qualified organization* means a public or private nonprofit organization, other than a grantmaking entity, that—

(1) Has experience in working with school-age youth; and

(2) Was in existence at least one year before the date on which the organization submitted an application for a service-learning program.

Recognized equivalent of a high-school diploma. The term *recognized equivalent of a high-school diploma* means:

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high-school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high-school but who excelled academically in high-school, documentation that the student excelled academically in high-school and has met the formalized, written policies of the institution for admitting such students.

Recurring access. The term *recurring access* means the ability on more than one occasion to approach, observe, or communicate with, an individual, through physical proximity or other means, including but not limited to, electronic or telephonic communication.

School-age youth. The term *school-age youth* means—

(1) Individuals between the ages of 5 and 17, inclusive; and

(2) Children with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of that Act.

Secondary school. The term *secondary school* has the same meaning given the term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

Service-learning. The term *service-learning* means a method under which students or participants learn and develop through active participation in thoughtfully organized service that—

(1) Is conducted in and meets the needs of a community;

(2) Is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community;

(3) Helps foster civic responsibility;

(4) Is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and

(5) Includes structured time for the students and participants to reflect on the service experience.

Service-learning coordinator. The term *service-learning coordinator* means an individual trained in service-learning who identifies community partners for LEAs; assists in designing and implementing local partnerships service-learning programs; provides technical assistance and information to, and facilitates the training of, teachers; and provides other services for an LEA.

State. The term *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until the Compact of Free Association is ratified.

State Commission. The term *State Commission* means a State Commission on National and Community Service maintained by a State pursuant to section 178 of the Act. Except when used in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under that section to act in lieu of a State Commission.

State educational agency (SEA). The term *State educational agency* has the same meaning given that term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

Student. The term *student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-time or part-time basis.

Subdivision of a State. The term *subdivision of a State* means an governmental unit within a State other than a unit with Statewide responsibilities.

Subtitle C program. The term *subtitle C program* means an AmeriCorps program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq*.) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

Target community. The term *target community* means the geographic community in which an AmeriCorps grant applicant intends to provide service to address an identified unmet human, educational, environmental, or public safety (including disaster-preparedness and response) need.

U.S. Territory. The term *U.S. Territory* means the Virgin Islands, Guam, American Samoa, the Commonwealth of the

Northern Mariana Islands, and Palau, until the Compact of Free Association with Palau is ratified.

[59 FR 13783, Mar. 23, 1994, as amended at 63 FR 18137, Apr. 14, 1998; 67 FR 45359, July 9, 2002; 70 FR 39596, July 8, 2005; 72 FR 48581, Aug. 24, 2007; 73 FR 53759, Sept. 17, 2008; 74 FR 46502, Sept. 10, 2009; 75 FR 51409, Aug. 20, 2010; 77 FR 60931, Oct. 5, 2012; 79 FR 76077, Dec. 19, 2014]

PART 2513 [RESERVED]

PART 2515—SERVICE-LEARNING PROGRAM PURPOSES

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

§ 2515.10 What are the service-learning programs of the Corporation for National and Community Service?

(a) There are three service-learning programs: (1) School-based programs, described in part 2516 of this chapter.

(2) Community-based programs, described in part 2517 of this chapter.

(3) Higher education programs, described in part 2519 of this chapter.

(b) Each program gives participants the opportunity to learn and develop their own capabilities through service-learning, while addressing needs in the community.

[59 FR 13786, Mar. 23, 1994]

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

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AUTHORITY: 42 U.S.C. 12521–12529; 42 U.S.C. 12645g.

SOURCE: 59 FR 13786, Mar. 23, 1994, unless otherwise noted.

Subpart A—Eligibility To Apply

SOURCE: 74 FR 46502, Sept. 10, 2009, unless otherwise noted.

§ 2516.100 What is the purpose of school-based service-learning programs?

The purpose of school-based service-learning programs is to promote service-learning as a strategy to support high-quality service-learning projects that engage students in meeting community needs with demonstrable results, while enhancing students' academic and civic learning; and support efforts to build institutional capacity, including the training of educators, and to strengthen the service infrastructure to expand service opportunities.

§ 2516.110 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA). For purposes of this part ''State'' means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600(b), U.S. Territories; ''SEA'' means a ''State educational agency'' as defined in § 2510.20 of this chapter or an SEA-designated statewide entity (which may be a community-based entity) with demonstrated experience in supporting or implementing service-learning programs.

(2) An Indian Tribe.

(3) For activities in a nonparticipating State or Indian Tribe, a community-based entity as defined in § 2510.20.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

§ 2516.120 Who may apply for funding a subgrant?

Entities that may apply for a subgrant from a State, Indian Tribe, or community-based entity are:

(a) A qualified organization, Indian Tribe, Territory, local educational agency, for-profit business, private elementary school or secondary school, or institution of higher education for a grant from a State for planning and building the capacity of school-based service-learning programs.

(b) A local partnership, for a grant from a State to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business, or private elementary or secondary school, or an Indian Tribe (except that an Indian Tribe distributing funds to a project under this paragraph is not eligible to be part of the partnership operating that project).

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; will make projects available for participants, who must be students; and was in existence at least one year before the date on which the organization submitted an application under this part.

(c) An LEA or Indian Tribe for planning school-based service-learning programs involving paying, recruiting, and supporting service-learning coordinators.

(d) An LEA, local partnership, or public or private nonprofit organization for a grant from a State to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or an Indian Tribe (except that an Indian Tribe distributing funds under this paragraph is not eligible to be a recipient of those funds) that coordinate and operate projects for participants who must be students.

(e) An eligible entity for a grant from a State or Indian Tribe to carry out civic engagement activities.

Subpart B—Use of Grant Funds

§ 2516.200 How may grant funds be used?

Funds under a school-based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building.* (1) A State, Indian Tribe, or community-based entity may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following:

(i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula, consistent with State or local academic content standards, to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.120 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(vi) Establishing effective outreach and dissemination of information to ensure the broadest possible participation of schools throughout the State, Territory or serving the Indian Tribe involved, with particular attention to schools not making adequate yearly progress for two or more consecutive years under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*).

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service-learning coordinators.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be, but are not required to be, participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter, or who receive AmeriCorps education awards, or who may be participants in a project under section 201 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001), or who may participate in a Youthbuild program under section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a).

(d) *Adult volunteer programs.* (1) A State, Indian Tribe, or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local

partnerships for adult volunteer programs in that State.

(e) *Planning by Indian Tribes and U.S. Territories.* If the Corporation makes a grant to an Indian Tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

(f) *Civic engagement programs.* A State, Indian Tribe, Territory or qualified organization may use funds to support service-learning civic engagement programs that promote a better understanding of:

(1) The principles of the Constitution, the heroes of United States history (including military history), and the meaning of the Pledge of Allegiance;

(2) How the Nation's government functions; and

(3) The importance of service in the Nation's character.

[74 FR 46503, Sept. 10, 2009]

Subpart C—Eligibility To Participate

§ 2516.300 Who may participate in a school-based service-learning program?

Students who are enrolled in elementary or secondary schools on a full-time or part-time basis may participate in school-based programs.

§ 2516.310 May private school students participate?

(a) Yes. To the extent consistent with the number of students in the State or Indian tribe or in the school district of the LEA involved who are enrolled in private nonprofit elementary or secondary schools, the State, Indian tribe, or LEA must (after consultation with appropriate private school representatives) make provision—

(1) For the inclusion of services and arrangements for the benefit of those students so as to allow for the equitable participation of the students in the programs under this part; and

(2) For the training of the teachers of those students so as to allow for the equitable participation of those teachers in the programs under this part.

(b) If a State, Indian tribe, or LEA is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Corporation determines that a State, Indian tribe, or LEA substantially fails or is unwilling to provide for their participation on an equitable basis, the Corporation will waive those requirements and arrange for the provision of services to the students and teachers.

[59 FR 13786, Mar. 23, 1994, as amended at 74 FR 46504, Sept. 10, 2009]

§ 2516.320 Is a participant eligible to receive an AmeriCorps educational award?

No. However, service-learning coordinators who are approved AmeriCorps positions are eligible for AmeriCorps educational awards.

Subpart D—Application Contents

§ 2516.400 What must a State or Indian tribe include in an application for a grant?

In order to apply for a grant from the Corporation under this part, a State (SEA) or Indian tribe must submit the following: (a) A three-year strategic plan for promoting service-learning through programs under this part, or a revision of a previously approved three-year strategic plan. The application of a SEA must include a description of how the SEA will coordinate its service-learning plan with the State Plan under § 2550.80(a) of this chapter and with other federally-assisted activities.

(b) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207,

as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

[59 FR 13786, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46504, Sept. 10, 2009]

§ 2516.410 What must a community-based entity include in an application for a grant?

In order to apply to the Corporation for a grant, a community-based entity must submit the following:

(a) A detailed description of the proposed program goals and activities. The application of a community-based entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under § 2513 of this chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other Federally-assisted activities.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluations;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

[74 FR 46504, Sept. 10, 2009]

§ 2516.420 What must an LEA, local partnership, qualified organization or other eligible entity include in an application for a subgrant?

In order to apply for a subgrant from a State, Indian Tribe, or community-based entity under this part, an applicant must include the information required by the Corporation grantee.

[74 FR 46504, Sept. 10, 2009]

Subpart E—Application Review

§ 2516.500 How does the Corporation review the merits of an application?

(a) In reviewing the merits of an application submitted to the Corporation under this part, the Corporation evaluates the quality, innovation, replicability, and sustainability of the proposal on the basis of the following criteria: (1) Quality, as indicated by the extent to which—

(i) The program will provide productive meaningful, educational experiences that incorporate service-learning methods;

(ii) The program will meet community needs and involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together to explore the root causes of community problems;

(iii) The principal leaders of the program will be well qualified for their responsibilities;

(iv) The program has sound plans and processes for training, technical assistance, supervision, quality control, evaluation, administration, and other key activities; and

(v) The program will advance knowledge about how to do effective and innovative community service and service-learning and enhance the broader elementary and secondary education field.

(2) Replicability, as indicated by the extent to which the program will assist others in learning from experience and replicating the approach of the program.

(3) Sustainability, as indicated by the extent to which—

(i) An SEA, Indian tribe or community-based entity applicant demonstrates the ability and willingness to coordinate its activities with the State

Plan under § 2550.80(a) of this chapter and with other federally assisted activities;

(ii) The program will foster collaborative efforts among local educational agencies, local government agencies, community based agencies, businesses, and State agencies;

(iii) The program will enjoy strong, broad-based community support; and

(iv) There is evidence that financial resources will be available to continue the program after the expiration of the grant.

(b) The Corporation also gives priority to proposals that—

(1) Involve participants in the design and operation of the program;

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas or serving economically disadvantaged youth:

(3) Involve students from public and private schools serving together;

(4) Involve students of different ages, races, genders, ethnicities, abilities and disabilities, or economic backgrounds, serving together;

(5) Are integrated into the academic program of the participants;

(6) Best represent the potential of service-learning as a vehicle for education reform and school-to-work transition;

(7) Develop civic responsibility and leadership skills and qualities in participants;

(8) Demonstrate the ability to achieve the goals of this part on the basis of the proposal's quality, innovation, replicability, and sustainability; or

(9) Address any other priority established by the Corporation for a particular period.

(c) In reviewing applications submitted by Indian tribes and U.S. Territories, the Corporation—

(1) May decide to approve only planning of school-based service-learning programs; and

(2) Will set the amounts of grants in accordance with the respective needs of applicants.

[59 FR 13786, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46504, Sept. 10, 2009]

§ 2516.510 What happens if the Corporation rejects a State's application for an allotment grant?

If the Corporation rejects a State's application for an allotment grant under § 2516.600(b)(2), the Corporation will—

(a) Promptly notify the State of the reasons for the rejection;

(b) Provide the State with a reasonable opportunity to revise and resubmit the application;

(c) Provide technical assistance, if necessary; and

(d) Promptly reconsider the resubmitted application and make a decision.

§ 2516.520 How does a State, Indian tribe, or community-based entity review the merits of an application?

In reviewing the merits of an application for a subgrant under this part, a Corporation grantee must use the criteria and priorities in § 2516.500.

[59 FR 13786, Mar. 23, 1994, as amended at 74 FR 46504, Sept. 10, 2009]

Subpart F—Distribution of Funds

§ 2516.600 How are funds for school-based service-learning programs distributed?

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not less than two percent and not more than three percent for grants to Indian Tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows:

(1) Allotments to States.

(i) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of

Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(1) of this section, for any fiscal year for which amounts appropriated for Part I of Subtitle B of Title I of the National and Community Service Act of 1990 (42 U.S.C. 12521 *et seq.*) exceed $50,000,000, the minimum allotment to each State under this paragraph (b)(1) will be $75,000.

(2) For the purpose of paragraph (b) of this section, ''State'' means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian Tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to community-based entities for activities in nonparticipating States) may use its allotment for States and Indian Tribes with approved applications, as the Corporation determines appropriate.

[74 FR 46504, Sept. 10, 2009]

Subpart G—Funding Requirements

§ 2516.700 What matching funds are required?

(a) The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Eighty percent of the total cost for the first year for which the program receives assistance;

(2) Sixty-five percent of the total cost for the second year; and

(3) Fifty percent of the total cost for the third year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws or title I of the Elementary and Secondary Act of 1965 (20 U.S.C. 6311 *et seq.*)).

(c) The Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

[74 FR 46504, Sept. 10, 2009]

§ 2516.710 What are the limits on the use of funds?

The following limits apply to funds available under this part:

(a) (1) Not more than six percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant is subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs, the Corporation may approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to six percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of six percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Use such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

[74 FR 46505, Sept. 10, 2009]

§ 2516.720 What is the length of each type of grant?

(a) One year is the maximum length of—

(1) A planning grant under § 2516.200 (a), (c) or (e); and

(2) A grant to a local partnership for activities in a nonparticipating State under § 2516.200 (b)(2) and (d)(2).

(b) All other grants are for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2516.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2516.800 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

§ 2516.810 What types of evaluations are grantees and subgrantees required to perform?

All grantees and subgrantees are required to perform internal evaluations which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluations which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

§ 2516.820 What types of internal evaluation activities are required of programs?

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and service recipients. Internal evaluations should seek frequent feedback and provide for quick correction of weakness. The Corporation encourages programs to use internal evaluation methods, such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and service recipient and participant surveys.

(b) Track progress toward pre-established objectives. Objectives must be established by programs and approved by the Corporation. Programs must submit to the Corporation (or the Corporation grantee as applicable) periodic performance reports.

(c) Collect and submit to the Corporation (through the Corporation grantee as applicable) the following data: (1) The total number of participants in each program and basic demographic characteristics of the participants including sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(2) Other information as required by the Corporation.

(d) Cooperate fully with all Corporation evaluation activities.

§ 2516.830 What types of activities are required of Corporation grantees to evaluate the effectiveness of their subgrantees?

A Corporation grantee that makes subgrants must do the following: (a) Ensure that subgrantees comply with the requirements of § 2516.840.

(b) Track program performance in terms of progress toward pre-established objectives; ensure that corrective action is taken when necessary; and submit to the Corporation periodic performance reports.

(c) Collect from programs and submit to the Corporation the descriptive information required in § 2516.820(c)(1).

(d) Cooperate fully with all Corporation evaluation activities.

§ 2516.840 By what standards will the Corporation evaluate individual Learn and Serve America programs?

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award.

(b) The extent to which the program is cost-effective.

(c) Other criteria as determined and published by the Corporation.

§ 2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?

(a) The Corporation will conduct independent evaluations. These evaluations will consider the opinions of participants and members of the communities where services are delivered. If appropriate, these evaluations will compare participants with individuals who have not participated in service-learning programs. These evaluations will—

(1) Study the extent to which service-learning programs as a whole affect the involved communities;

(2) Determine the extent to which service-learning programs as a whole increase academic learning of participants, enhance civic education, and foster continued community involvement; and

(3) Determine the effectiveness of different program models.

(b) The Corporation will also determine by June 30, 1995, whether outcomes of service-learning programs are defined and measured appropriately, and the implications of the results from such a study for authorized funding levels.

§ 2516.860 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2516.840. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees under this part must comply with the provisions of paragraph (a) of this section.

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

Subpart A—Eligibility To Apply

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Subpart H—Evaluation Requirements

2517.800 What are the evaluation requirements for community-based programs?

AUTHORITY: 42 U.S.C. 12541–12547.

SOURCE: 59 FR 13790, Mar. 23, 1994, unless otherwise noted.

Subpart A—Eligibility To Apply

§ 2517.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation: (1) A State Commission established under part 2550 of this chapter.

(2) A grantmaking entity as defined in § 2510.20 of this chapter.

(3) A qualified organization as defined in § 2515.20 of this chapter.

(b) The types of grants for which each entity is eligible are described in § 2517.200.

§ 2517.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State Commission or grantmaking entity are qualified organizations that have entered into a local partnership with one or more—

(a) Local educational agencies (LEAs);

(b) Other qualified organizations; or

(c) Both.

Subpart B—Use of Grant Funds

§ 2517.200 How may grant funds be used?

Funds under a community-based Learn and Serve grant may be used for the purposes described in this section.

(a) A State Commission or grantmaking entity may use funds—

(1) To make subgrants to qualified organizations described in § 2517.110 to implement, operate, expand, or replicate a community-based service program that provides direct and demonstrable educational, public safety, human, or environmental service by participants, who must be school-age youth; and

(2) To provide training and technical assistance to qualified organizations.

(b) (1) A qualified organization may use funds under a direct grant or a subgrant to implement, operate, expand, or replicate a community-based service program.

(2) If a qualified organization receives a direct grant, its program must be carried out at multiple sites or be particularly innovative.

Subpart C—Eligibility To Participate

§ 2517.300 Who may participate in a community-based service-learning program?

School-age youth as defined in § 2510.20 of this chapter may participate in a community-based program.

Subpart D—Application Contents

§ 2517.400 What must a State Commission or grantmaking entity include in an application for a grant?

(a) In order to apply for a grant from the Corporation under this part, a State Commission or a grantmaking entity must submit the following: (1) A three-year plan for promoting service-learning through programs under this part. The plan must describe the types of community-based program models proposed to be carried out during the first year.

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(3) A description of how the applicant will coordinate its activities with the State Plan under § 2550.80(a) of this chapter and with other federally-assisted activities, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission.

(4) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Ensure that, prior to placing a participant in a program, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work

proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In addition, a grantmaking entity must submit information demonstrating that the entity will make grants for a program—

(1) To carry out activities in two or more States, under circumstances in which those activities can be carried out more efficiently through one program than through two or more programs; and

(2) To carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

[59 FR 13790, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008]

§ 2517.410 What must a qualified organization include in an application for a grant or a subgrant?

(a) In order to apply to the Corporation for a direct grant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program;

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package; and

(3) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In order to apply to a State Commission or a grantmaking entity for a subgrant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program; and

(2) Such specific program, budget, and other information as the Commission or entity reasonably requires.

Subpart E—Application Review

§ 2517.500 How is an application reviewed?

In reviewing an application for a grant or a subgrant, the Corporation, a State Commission, or a grantmaking entity will apply the following criteria:
(a) The quality of the program proposed.

(b) The innovation of, and feasibility of replicating, the program.

(c) The sustainability of the program, based on—

(1) Strong and broad-based community support;

(2) Multiple funding sources or private funding; and

(3) Coordination with the State Plan under § 2550.80(a) of this chapter and other federally-assisted activities.

(d) The quality of the leadership of the program, past performance of the program, and the extent to which the program builds on existing programs.

(e) The applicant's efforts—

(1) To recruit participants from among residents of the communities in which projects would be conducted;

(2) To ensure that the projects are open to participants of different ages, races, genders, ethnicities, abilities and disabilities, and economic backgrounds; and

(3) To involve participants and community residents in the design, leadership, and operation of the program.

(f) The extent to which projects would be located in areas that are—

(1) Empowerment zones, redevelopment areas, or other areas with high concentrations of low-income people; or

(2) Environmentally distressed.

[59 FR 13790, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008]

Subpart F—Distribution of Funds

§ 2517.600 How are funds for community-based service-learning programs distributed?

All funds are distributed by the Corporation through competitive grants.

Subpart G—Funding Requirements

§ 2517.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

§ 2517.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a) (1) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) (1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) The Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to

participation in a program assisted under this part.

[63 FR 18137, Apr. 14, 1998]

§ 2517.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2517.800 What are the evaluation requirements for community-based programs?

The evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2518—SERVICE-LEARNING CLEARINGHOUSE

Sec.

2518.100 What is the purpose of a Service-Learning Clearinghouse?
2518.110 What are the functions of a Service-Learning Clearinghouse?

AUTHORITY: 42 U.S.C. 12653o.

§ 2518.100 What is the purpose of a Service-Learning Clearinghouse?

The Corporation will provide financial assistance, from funds appropriated to carry out the activities listed under parts 2531 through 2534 of this chapter, to public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, to establish a clearinghouse, which will carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

[59 FR 13792, Mar. 23, 1994, as amended at 75 FR 51409, Aug. 20, 2010]

§ 2518.110 What are the functions of a Service-Learning Clearinghouse?

An organization that receives assistance from funds appropriated to carry out the activities listed under parts 2531 through 2534 of this chapter may—

(a) Assist entities carrying out State or local service-learning programs with needs assessments and planning;

(b) Conduct research and evaluations concerning service-learning;

(c)(1) Provide leadership development and training to State and local service-learning program administrators, supervisors, project sponsors, and participants; and

(2) Provide training to persons who can provide the leadership development and training described in paragraph (c)(1) of this section;

(d) Facilitate communication among entities carrying out service-learning programs and participants in such programs;

(e) Provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this title;

(f) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(g)(1) Gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(2) Coordinate the activities of the Clearinghouse with appropriate entities to avoid duplication of effort;

(h) Make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(i) Assist organizations in recruiting, screening, and placing service-learning coordinators; and

(j) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

[59 FR 13792, Mar. 23, 1994, as amended at 75 FR 51409, Aug. 20, 2010]

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

Subpart A—Purpose and Eligibility To Apply

Sec.
2519.100 What is the purpose of the Higher Education programs?
2519.110 Who may apply for a grant?
2519.120 What is the Federal Work-Study requirement?

Subpart B—Use of Grant Funds

2519.200 How may grant funds be used?

Subpart C—Participant Eligibility and Benefits

2519.300 Who may participate in a Higher Education program?
2519.310 Is a participant eligible to receive an AmeriCorps educational award?
2519.320 May a program provide a stipend to a participant?

Subpart D—Application Contents

2519.400 What must an applicant include in an application for a grant?

Subpart E—Application Review

2519.500 How does the Corporation review an application?

Subpart F—Distribution of Funds

2519.600 How are funds for Higher Education programs distributed?

Subpart G—Funding Requirements

2519.700 Are matching funds required?
2519.710 Are there limits on the use of funds?
2519.720 What is the length of a grant?
2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

Subpart H—Evaluation Requirements

2519.800 What are the evaluation requirements for Higher Education programs?

AUTHORITY: 42 U.S.C. 12561; 42 U.S.C. 12645g.

SOURCE: 59 FR 13792, Mar. 23, 1994, unless otherwise noted.

Subpart A—Purpose and Eligibility To Apply

§ 2519.100 What is the purpose of the Higher Education programs?

The purpose of the higher education innovative programs for community service is to expand participation in community service by supporting high-quality, sustainable community service programs carried out through institutions of higher education, acting as civic institutions helping to meet the educational, public safety, human, and environmental needs of the communities in which the programs operate.

§ 2519.110 Who may apply for a grant?

The following entities may apply for a grant from the Corporation: (a) An institution of higher education.

(b) A consortium of institutions of higher education.

(c) A higher education partnership, as defined in § 2510.20 of this chapter.

§ 2519.120 What is the Federal Work-Study requirement?

To be eligible for assistance under this part, an institution of higher education must demonstrate that it meets the minimum requirements under section 443(b)(2)(A) of the Higher Education Act of 1965 (42 U.S.C. 2753(b)(2)(A)) relating to the participation of students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) (relating to Federal Work-Study programs) in community service activities, or has received a waiver of those requirements from the Secretary of Education.

[74 FR 46505, Sept. 10, 2009]

Subpart B—Use of Grant Funds

§ 2519.200 How may grant funds be used?

Funds under a higher education program grant may be used for the following activities: (a) Enabling an institution of higher education, a higher education partnership or a consortium to create or expand an organized community service program that—

(1) Engenders a sense of social responsibility and commitment to the

community in which the institution is located; and

(2) Provides projects for the participants described in § 2519.300.

(b) Supporting student-initiated and student-designed community service projects.

(c) Strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and post-secondary levels with respect to service-learning by—

(1) Including service-learning as a key component of the preservice teacher education of the institution; and

(2) Encouraging the faculty of the institution to use service-learning methods throughout the curriculum.

(d) Facilitating the integration of community service carried out under the grant into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students may obtain credit for their community service projects.

(e) Supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) to support service-learning and community service.

(f) Strengthening the service infrastructure within institutions of higher education in the United States that supports service-learning and community service.

(g) Providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

Subpart C—Participant Eligibility and Benefits

§ 2519.300 Who may participate in a Higher Education program?

Students, faculty, administration and staff of an institution, as well as residents of the community may participate. For the purpose of this part, the term ''student'' means an individual who is enrolled in an institution of higher education on a full-time or part-time basis.

§ 2519.310 Is a participant eligible to receive an AmeriCorps educational award?

In general, no. However, certain positions in programs funded under this part may qualify as approved AmeriCorps positions. The Corporation will establish eligibility requirements for these positions as a part of the application package.

§ 2519.320 May a program provide a stipend to a participant?

(a) A program may provide a stipend for service activities for a participant who is a student if the provision of stipends in reasonable in the context of a program's design and objectives.

(1) A program may not provide a stipend to a student who is receiving academic credit for service activities unless the service activities require a substantial time commitment beyond that expected for the credit earned.

(2) A participant who is earning money for service activities under the work-study program described in § 2519.200(e) may not receive an additional stipend from funds under this part.

(b) Consistent with the AmeriCorps program requirements in § 2522.100 of this chapter, a program with participants serving in approved full-time AmeriCorps positions must ensure the provision of a living allowance and, if necessary, health care and child care to those participants. A program may, but is not required to, provide a prorated living allowance to individuals participating in approved AmeriCorps positions on a part-time basis, consistent with the AmeriCorps program requirements in § 2522.240 of this chapter.

Subpart D—Application Contents

§ 2519.400 What must an applicant include in an application for a grant?

In order to apply to the Corporation for a grant, an applicant must submit the following: (a) A plan describing the goals and activities of the proposed program.

(b) The specific program, budget, and other information and assurances specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, nondisplacement, and grievance procedure requirements of Part 2540.

(3) Prior to the placement of a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees; and

(4) Comply with any other assurances that the Corporation deems necessary.

[59 FR 13792, Mar. 23, 1994, as amended at 74 FR 46505, Sept. 10, 2009]

Subpart E—Application Review

§ 2519.500 How does the Corporation review an application?

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing applications submitted under this part, the Corporation will take into consideration whether proposed programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools and colleges;

(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth, older adults, low-income communities, a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at the institution;

(5) Demonstrate community involvement in the development of the proposal and the extent to which the proposal will contribute to the goals of the involved community members;

(6) Demonstrate a commitment to perform community service projects in underserved urban and rural communities;

(7) Describe research on effective strategies and methods to improve service utilized in the design of the projects;

(8) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education;

(9) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth; or

(10) Describe the needs that the proposed projects are designed to address, such as housing, economic development, infrastructure, health care, job training, education, crime prevention, urban planning, transportation, information technology, or child welfare.

(c) In addition, the Corporation may designate additional review criteria in an application notice that will be used in selecting programs.

[74 FR 46505, Sept. 10, 2009]

Subpart F—Distribution of Funds

§ 2519.600 How are funds for Higher Education programs distributed?

All funds under this part are distributed by the Corporation through grants or by contract.

Subpart G—Funding Requirements

§ 2519.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed 50 percent.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources (including private funds or donated services) or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

[59 FR 13792, Mar. 23, 1994, as amended at 74 FR 46506, Sept. 10, 2009]

§ 2519.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a) (1) Not more than six percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to six percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of six percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

[63 FR 18138, Apr. 14, 1998, as amended at 74 FR 46506, Sept. 10, 2009]

§ 2519.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

Subpart H—Evaluation Requirements

§ 2519.800 What are the evaluation requirements for Higher Education programs?

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

Sec.

2520.5 What definitions apply to this part?
2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?
2520.20 What service activities may I support with my grant?
2520.25 What direct service activities may AmeriCorps members perform?
2520.30 What capacity-building activities may AmeriCorps member perform?
2520.35 Must my program recruit or support volunteers?
2520.40 Under what circumstances may AmeriCorps members in my program raise resources?
2520.45 How much time may an AmeriCorps member spend fundraising?
2520.50 How much time may AmeriCorps members in my program spend in education and training activities?
2520.55 When may my organization collect fees for services provided by AmeriCorps members?
2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?
2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

§ 2520.5 What definitions apply to this part?

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

[70 FR 39596, July 8, 2005]

§ 2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps subtitle C program is to provide financial assistance under subtitle C of the National and Community Service Act to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service, and to provide AmeriCorps education awards to participants in such programs.

[67 FR 45359, July 9, 2002]

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

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

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

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

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

[70 FR 39596, July 8, 2005]

§ 2520.25 What direct service activities may AmeriCorps members perform?

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

(b) Your members' direct service activities must address local environmental, educational, public safety (including disaster preparedness and response), or other human needs.

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

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

(1) Tutoring children in reading;

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

(3) Engaging in community clean-up projects;

(4) Providing health information to a vulnerable population;

(5) Teaching as part of a professional corps;

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

(7) Conducting a neighborhood watch program as part of a public safety effort.

[70 FR 39597, July 8, 2005]

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

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

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

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

(1) Strengthening volunteer management and recruitment, including:

(i) Enlisting, training, or coordinating volunteers;

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

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

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

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

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

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

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

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

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

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

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

(vi) Supporting staff and board education.

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

(i) Community organizations, including faith-based organizations;

(ii) Foundations;

(iii) Local government agencies;

(iv) Institutions of higher education; and

(v) Local education agencies or organizations.

[70 FR 39597, July 8, 2005]

§ 2520.35 Must my program recruit or support volunteers?

(a) Unless the Corporation or the State commission, as appropriate, approves otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

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

[70 FR 39597, July 8, 2005]

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

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

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

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

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

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

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

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

(c) AmeriCorps members may not:

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

(2) Write a grant application to the Corporation or to any other Federal agency.

[70 FR 39597, July 8, 2005]

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

An AmeriCorps member may spend no more than ten percent of his or her originally agreed-upon term of service, as reflected in the member enrollment in the National Service Trust, performing fundraising activities, as described in § 2520.40.

[70 FR 39597, July 8, 2005]

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

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program, as reflected in the member enrollments in the National Service Trust, may be spent in education and training activities.

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

[70 FR 39597, July 8, 2005]

§ 2520.55 When may my organization collect fees for services provided by AmeriCorps members?

You may, where appropriate, collect fees for direct services provided by AmeriCorps members if:

(a) The service activities conducted by the members are allowable, as defined in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and

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

[70 FR 39597, July 8, 2005]

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

You must follow OMB Guidance published at 2 CFR part 200 and Corporation implementing regulations at 2 CFR Chapter XXII. In particular, see 2 CFR 200.442—Fundraising and Investment Management Costs.

[79 FR 76077, Dec. 19, 2014]

§ 2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

(a) While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:

(1) Attempting to influence legislation;

(2) Organizing or engaging in protests, petitions, boycotts, or strikes;

(3) Assisting, promoting, or deterring union organizing;

(4) Impairing existing contracts for services or collective bargaining agreements;

(5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(8) Providing a direct benefit to—

(i) A business organized for profit;

(ii) A labor union;

(iii) A partisan political organization;

(iv) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative;

(v) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

(9) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;

(10) Providing abortion services or referrals for receipt of such services; and

(11) Such other activities as the Corporation may prohibit.

(b) Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

[67 FR 45359, July 9, 2002. Redesignated at 70 FR 39597, July 8, 2005; 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009]

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

Sec.

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AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

§ 2521.5 What definitions apply to this part?

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

[70 FR 39598, July 8, 2005]

§ 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education are eligible to apply for AmeriCorps subtitle C grants. However, the fifty States, the District of Columbia and Puerto Rico

must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible.

(b) The Corporation may also enter into contracts or cooperative agreements for AmeriCorps assistance with Federal agencies that are Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies may only receive assistance pursuant to a contract or agreement with the central department or agency. The requirements relating to Federal agencies are described in part 2523 of this chapter.

[59 FR 13794, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

§ 2521.20 What types of AmeriCorps subtitle C program grants are available for award?

The Corporation may make the following types of grants to eligible applicants. The requirements of this section will also apply to any State or other applicant receiving assistance under this part that proposes to conduct a grant program using the assistance to support other national or community service programs.

(a) *Planning grants*—(1) *Purpose.* The purpose of a planning grant is to assist an applicant in completing the planning necessary to implement a sound concept that has already been developed.

(2) *Eligibility.* (i) States may apply directly to the Corporation for planning grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

(3) *Duration.* A planning grant will be negotiated for a term not to exceed one year.

(b) *Operational grants*—(1) *Purpose.* The purpose of an operational grant is to fund an organization that is ready to establish, operate, or expand an AmeriCorps program. An operational grant may include AmeriCorps educational awards. An operational grant may also include a short planning period of up to six months, if necessary, to implement a program.

(2) *Eligibility.* (i) States may apply directly to the Corporation for operational grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. The Corporation may limit the categories of applicants eligible to apply directly to the Corporation for assistance under this section consistent with its National priorities.

(3) *Duration.* An operational grant will be negotiated for a term not to exceed three years. Within a three-year term, renewal funding will be contingent upon periodic assessment of program quality, progress to date, and availability of Congressional appropriations.

(c) *Replication Grants.* The Corporation may provide assistance for the replication of an existing national service program to another geographical location.

(d) *Training, technical assistance and other special grants*—(1) *Purpose.* The purpose of these grants is to ensure broad access to AmeriCorps programs for all Americans, including those with disabilities; support disaster relief efforts; assist efforts to secure private support for programs through challenge grants; and ensure program quality by supporting technical assistance and training programs.

(2) *Eligibility.* Eligibility varies and is detailed under 45 CFR part 2524, ''Technical Assistance and Other Special Grants.''

(3) *Duration.* Grants will be negotiated for a renewable term of up to three years.

[59 FR 13794, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

§ 2521.30 How will AmeriCorps subtitle C program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps subtitle C program grants as follows:

(a) *Grants to State Applicants.* (1) For the purposes of this section, the term ''State'' means the fifty States, Puerto Rico, and the District of Columbia.

(2) One-third of the funds available under this part and a corresponding allotment of AmeriCorps educational awards, as specified by the Corporation, will be distributed according to a population-based formula to the 50 States, Puerto Rico and the District of Columbia if they have applications approved by the Corporation.

(3) At least one-third of funds available under this part and an appropriate number of AmeriCorps awards, as determined by the Corporation, will be awarded to States on a competitive basis. In order to receive these funds, a State must receive funds under paragraphs (a)(2) or (b)(1) of this section in the same fiscal year.

(4) In making subgrants with funds awarded by formula or competition under paragraphs (a)(2) or (3) of this section, a State must ensure that a minimum of 50 percent of funds going to States will be used for programs that operate in the areas of need or on Federal or other public lands, and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

(b) *Grants to Applicants other than States.* (1) One percent of available funds will be distributed to the U.S. Territories[1] that have applications approved by the Corporation according to a population-based formula.[2]

(2) One percent of available funds will be reserved for distribution to Indian tribes on a competitive basis.

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), institutions of higher education, and Federal agencies. No more than one-third of the these remaining funds may be awarded to Federal agencies.

(c) *Allocation of AmeriCorps educational awards only.* The Corporation will determine on an annual basis the appropriate number of educational awards to make available for eligible applicants who have not applied for program assistance.

(d) *Effect of States' or Territories' failure to apply.* If a State or U.S. Territory does not apply for or fails to give adequate notice of its intent to apply for a formula-based grant as announced by the Corporation and published in applications and the Notice of Funds Availability, the Corporation will use the amount of that State's allotment to make grants to eligible entities to carry out AmeriCorps programs in that State or Territory. Any funds remaining from that State's allotment after making such grants will be reallocated to the States, Territories, and Indian tribes with approved AmeriCorps applications at the Corporation's discretion.

(e) *Effect of rejection of State application.* If a State's application for a formula-based grant is ultimately rejected by the Corporation pursuant to § 2522.320 of this chapter, the State's allotment will be available for redistribution by the Corporation to the States, Territories, and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

(f) The Corporation will make grants for training, technical assistance and other special programs described in part 2524 of this chapter at the Corporation's discretion.

[59 FR 13794, Mar. 23, 1994, as amended at 63 FR 18138, Apr. 14, 1998; 67 FR 45360, July 9, 2002; 70 FR 39598, July 8, 2005; 73 FR 53759, Sept. 17, 2008]

[1] The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multiplied by the amount of the one percent set-aside.

PROGRAM MATCHING REQUIREMENTS

§ 2521.35 Who must comply with matching requirements?

(a) The matching requirements described in §§ 2521.40 through 2521.95 apply to you if you are a subgrantee of a State commission or a direct program grantee of the Corporation. These requirements do not apply to Education Award Programs.

(b) If you are a State commission, you must ensure that your grantees meet the match requirements established in this part, and you are also responsible for meeting an aggregate overall match based on your grantees' individual match requirements.

[70 FR 39598, July 8, 2005; 70 FR 48882, Aug. 22, 2005]

§ 2521.40 What are the matching requirements?

If you are subject to matching requirements under § 2521.35, you must adhere to the following:

(a) Basic match: At a minimum, you must meet the basic match requirements as articulated in § 2521.45.

(b) Regulatory match: In addition to the basic requirements under paragraph (a) of this section, you must provide an overall level of matching funds according to the schedule in § 2521.60(a), or § 2521.60(b) if applicable.

(c) Budgeted match: To the extent that the match in your approved budget exceeds your required match levels under paragraph (a) or (b) of this section, any failure to provide the amount above your regulatory match but below your budgeted match will be considered as a measure of past performance in subsequent grant competitions.

[70 FR 39598, July 8, 2005]

§ 2521.45 What are the limitations on the Federal government's share of program costs?

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

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

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

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

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

(4) The Corporation's share of health care costs may not exceed 85 percent.

(b) *Program operating costs:* The Corporation share of program operating costs may not exceed 67 percent. These costs include expenditures (other than member support costs described in paragraph (a) of this section) such as staff, operating expenses, internal evaluation, and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds (as long as the other Federal agency permits its funds to be used as match), or third party in-kind contributions.

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

(i) Be verifiable from your records;

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

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

(iv) Be allowable under applicable OMB cost principles.

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

[70 FR 39598, July 8, 2005]

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

If you are an Indian Tribe that receives tribal funds through Public Law 93–638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and

you may use them towards your share of costs, including member support costs.

[70 FR 39598, July 8, 2005]

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

Except as provided in paragraph (b) of this section, if your program continues to receive funding after an initial three-year grant period, you must continue to meet the minimum requirements in § 2541.45 of this part. In addition, your required share of program costs, including member support and operating costs, will incrementally increase to a 50 percent overall share by the tenth year and any year thereafter that you receive a grant, without a break in funding of five years or more. A 50 percent overall match means that you will be required to match $1 for every $1 you receive from the Corporation.

(a) *Minimum Organization Share:* (1) Subject to the requirements of § 2521.45 of this part, and except as provided in paragraph (b) of this section, your overall share of program costs will increase as of the fourth consecutive year that you receive a grant, according to the following timetable:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Year 5 (percent)	Year 6 (percent)	Year 7 (percent)	Year 8 (percent)	Year 9 (percent)	Year 10 (percent)
Minimum member support	15	15	15	15	15	15	15	15	15	15
Minimum operating costs	33	33	33	33	33	33	33	33	33	33
Minimum overall share	N/A	N/A	N/A	26	30	34	38	42	46	50

(2) A grantee must have contributed matching resources by the end of a grant period in an amount equal to the combined total of the minimum overall annual match for each year of the grant period, according to the table in paragraph (a)(1) of this section.

(3) A State commission may meet its match based on the aggregate of its grantees' individual match requirements.

(b) *Alternative match requirements:* If your program is unable to meet the match requirements as required in paragraph (a) of this section, and is located in a rural or a severely economically distressed community, you may apply to the Corporation for a waiver that would require you to increase the overall amount of your share of program costs beginning in the seventh consecutive year that you receive a grant, according to the following table:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Year 5 (percent)	Year 6 (percent)	Year 7 (percent)	Year 8 (percent)	Year 9 (percent)	Year 10 (percent)
Minimum member support	15	15	15	15	15	15	15	15	15	15
Minimum operating costs	33	33	33	33	33	33	33	33	33	33
Minimum overall share	N/A	N/A	N/A	N/A	N/A	N/A	29	31	33	35

(c) *Determining Program Location.* (1) The Corporation will determine whether your program is located in a rural county by considering the U.S. Department of Agriculture's Beale Codes.

(2) The Corporation will determine whether your program is located in a severely economically distressed county by considering unemployment rates, per capita income, and poverty rates.

(3) Unless the Corporation approves otherwise, as provided in paragraph (c)(4) of this section, the Corporation will determine the location of your program based on the legal applicant's address.

(4) If you believe that the legal applicant's address is not the appropriate way to consider the location of your program, you may request the waiver described in paragraph (b) of this section and provide the relevant facts about your program location to support your request.

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

(e) *Flexibility in how you provide your share:* As long as you meet the basic match requirements in § 2521.45, you may use cash or in-kind contributions to reach the overall share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required overall match by raising only more member support match, and leave operational match at the basic level, as long as you provide the required overall match.

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

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

[70 FR 39598, July 8, 2005]

§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.45 and 2521.60 of this part?

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.45 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

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

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

(2) That the lack of resources in your local community is unique or unusual;

(3) The efforts you have made to raise matching resources; and

(4) The amount of matching resources you have raised or reasonably expect to raise.

(c) You must provide with your waiver request:

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

(2) A budget and budget narrative that reflects the requested level in matching resources.

[70 FR 39598, July 8, 2005]

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

(a) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for five years or more, as determined by the end date of your most recent grant period, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

(b) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for fewer than five years, you must begin matching at the same level you were matching at the end of your most recent grant period.

[70 FR 39598, July 8, 2005]

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

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

[70 FR 39598, July 8, 2005]

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

(a) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(b) The distribution of administrative costs between the grant and any

subgrant will be subject to the approval of the Corporation.

(c) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(1) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(i) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(ii) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(2) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(3) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

[70 FR 39598, July 8, 2005]

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

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AUTHORITY: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911, Sec. 1612, Pub. L. 111–13.

SOURCE: 59 FR 13796, Mar. 23, 1994, unless otherwise noted.

Subpart A—Minimum Requirements and Program Types

§ 2522.10 What definitions apply to this part?

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

[70 FR 39600, July 8, 2005]

§ 2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps subtitle C programs must

meet certain minimum program requirements. These requirements apply regardless of whether a program is supported directly by the Corporation or through a subgrant. All AmeriCorps programs must:

(a) Address educational, public safety, human, or environmental needs, and provide a direct and demonstrable benefit that is valued by the community in which the service is performed;

(b) Perform projects that are designed, implemented, and evaluated with extensive and broad-based local input, including consultation with representatives from the community served, participants (or potential participants) in the program, community-based agencies with a demonstrated record of experience in providing services, and local labor organizations representing employees of project sponsors (if such entities exist in the area to be served by the program);

(c) Obtain, in the case of a program that also proposes to serve as the project sponsor, the written concurrence of any local labor organization representing employees of the project sponsor who are engaged in the same or substantially similar work as that proposed to be carried out by the AmeriCorps participant;

(d) Establish and provide outcome objectives, including a strategy for achieving these objectives, upon which self-assessment and Corporation-assessment of progress can rest. Such assessment will be used to help determine the extent to which the program has had a positive impact: (1) On communities and persons served by the projects performed by the program;

(2) On participants who take part in the projects; and

(3) In such other areas as the program or Corporation may specify;

(e) Strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic backgrounds, educational levels, both men and women and individuals with disabilities;

(f) Agree to seek actively to include participants and staff from the communities in which projects are conducted, and agree to seek program staff and participants of different races and ethnicities, socioeconomic backgrounds, educational levels, and genders as well as individuals with disabilities unless a program design requires emphasizing the recruitment of staff and participants who share a specific characteristic or background. In no case may a program violate the nondiscrimination, nonduplication and nondisplacement rules governing participant selection described in part 2540 of this chapter. In addition, programs are encouraged to establish, if consistent with the purposes of the program, an intergenerational component that combines students, out-of-school youths, and older adults as participants;

(g)(1) Determine the projects in which participants will serve and establish minimum qualifications that individuals must meet to be eligible to participate in the program; these qualifications may vary based on the specific tasks to be performed by participants. Regardless of the educational level or background of participants sought, programs are encouraged to select individuals who posses leadership potential and a commitment to the goals of the AmeriCorps program. In any case, programs must select participants in a non-partisan, non-political, non-discriminatory manner, ensuring fair access to participation. In addition, programs are required to ensure that they do not displace any existing paid employees as provided in part 2540 of this chapter;

(2) In addition, all programs are required to comply with any pre-service orientation or training period requirements established by the Corporation to assist in the selection of motivated participants. Finally, all programs must agree to select a percentage (to be determined by the Corporation) of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under part 2533 of this chapter. The Corporation may also specify a minimum percentage of participants to be selected from the national leadership pool established under § 2522.210(c). The Corporation may vary either percentage for different types of AmeriCorps programs;

(h) Provide reasonable accommodation, including auxiliary aids and services (as defined in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)) based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 101(8) of such Act (42 U.S.C. 12111(8)). For the purpose of complying with this provision, AmeriCorps programs may apply for additional financial assistance from the Corporation pursuant to § 2524.40 of this chapter;

(i) Use service experiences to help participants achieve the skills and education needed for productive, active citizenship, including the provision, if appropriate, of structured opportunities for participants to reflect on their service experiences. In addition, all programs must encourage every participant who is eligible to vote to register prior to completing a term of service;

(j) Provide participants in the program with the training, skills, and knowledge necessary to perform the tasks required in their respective projects, including, if appropriate, specific training in a particular field and background information on the community, including why the service projects are needed;

(k) Provide support services—

(1) To participants who are completing a term of service and making the transition to other educational and career opportunities; and

(2) To those participants who are school dropouts in order to assist them in earning the equivalent of a high school diploma;

(l) Ensure that participants serving in approved AmeriCorps positions receive the living allowance and other benefits described in §§ 2522.240 through 2522.250 of this chapter;

(m) Describe the manner in which the AmeriCorps educational awards will be apportioned among individuals serving in the program. If a program proposes to provide such benefits to less than 100 percent of the participants in the program, the program must provide a compelling rationale for determining which participants will receive the benefits and which participants will not. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards, however AmeriCorps grant funds may not be used to provide such benefits;

(n) Agree to identify the program, through the use of logos, common application materials, and other means (to be specified by the Corporation), as part of a larger national effort and to participate in other activities such as common opening ceremonies (including the administration of a national oath or affirmation), service days, and conferences designed to promote a national identity for all AmeriCorps programs and participants, including those participants not receiving AmeriCorps educational awards. This provision does not preclude an AmeriCorps program from continuing to use its own name as the primary identification, or from using its name, logo, or other identifying materials on uniforms or other items;

(o) Agree to begin terms of service at such times as the Corporation may reasonably require and to comply with any restrictions the Corporation may establish as to when the program may take to fill an approved AmeriCorps position left vacant due to attrition;

(p) Comply with all evaluation procedures specified by the Corporation, as explained in §§ 2522.500 through 2522.560;

(q) In the case of a program receiving funding directly from the Corporation, meet and consult with the State Commission for the State in which the program operates, if possible, and submit a copy of the program application to the State Commission; and

(r) Address any other requirements as specified by the Corporation.

[59 FR 13796, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002; 75 FR 51410, Aug. 20, 2010]

§ 2522.110 What types of programs are eligible to compete for AmeriCorps grants?

Types of programs eligible to compete for AmeriCorps grants include the following: (a) *Specialized skills programs.* (1) A service program that is targeted to address specific educational, public safety, human, or environmental needs and that—

(i) Recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such needs; and

(ii) If consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(2) A preprofessional training program in which students enrolled in an institution of higher education—

(i) Receive training in specified fields, which may include classes containing service-learning;

(ii) Perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(iii) Agree to provide service upon graduation to meet educational, public safety, human, or environmental needs related to such training.

(3) A professional corps program that recruits and places qualified participants in positions—

(i) As teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, public safety, human, or environmental needs in communities with an inadequate number of such professionals;

(ii) That may include a salary in excess of the maximum living allowance authorized in § 2522.240(b)(2); and

(iii) That are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any AmeriCorps educational award from the National Service Trust) of the participants.

(b) *Specialized service programs.* (1) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(2) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(i) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(ii) Involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(iii) Seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(iv) Providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(3) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(i) The housing needs of low-income families and the homeless; and

(ii) The need for community facilities in low-income areas.

(c) *Community-development programs.* (1) A community corps program that meets educational, public safety, human, or environmental needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such an area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such an area that meet unaddressed community and individual needs, including projects that would—

(i) Meet the needs of low-income children and youth aged 18 and younger, such as providing after-school 'safe-

places', including schools, with opportunities for learning and recreation; or

(ii) Be directed to other important unaddressed needs in such an area.

(d) *Programs that expand service program capacity.* (1) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under Serve-America.

(2) An AmeriCorps entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(e) *Campus-based programs.* A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(1) Students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*);

(2) Teams composed of such students; or

(3) Teams composed of a combination of such students and community residents.

(f) *Intergenerational programs.* An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other AmeriCorps programs described in this subsection.

(g) *Youth development programs.* A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under subtitle I, the Public Lands Corps established under the Public Lands Corps Act of 1993, the Urban Youth Corps established under section 106 of the National and Community Service Trust Act of 1993, and other conservation corps or youth service corps that perform service on Federal or other public lands or on Indian lands or Hawaiian home lands), that:

(1) Undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(2) Includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(3) Provides those participants who are youths and young adults with—

(i) Crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) The opportunity to develop citizenship values and skills through service to their community and the United States.

(h) *Individualized placement programs.* An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(i) *Other programs.* Such other AmeriCorps programs addressing educational, public safety, human, or environmental needs as the Corporation may designate in the application.

Subpart B—Participant Eligibility, Requirements, and Benefits

§ 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility.* An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States;

(4) Satisfy the National Service Criminal History Check eligibility criteria pursuant to 45 CFR 2540.202.

(b) *Written declaration regarding high school diploma sufficient for enrollment.* For purposes of enrollment, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (a) of this section relating to high school education, a program need not obtain additional documentation of that fact.

(c) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS–240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS–1350) issued by the State Department;

(6) A certificate of naturalization (Form N–550 or N–570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N–560 or N–561) issued by the Immigration and Naturalization Service.

(d) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I–551;

(2) Alien Registration Receipt Card, INS Form I–551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

(4) A Departure Record (INS Form I–94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(e) *Secondary documentation of citizenship or immigration status.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

[64 FR 37413, July 12, 1999, as amended at 67 FR 45360, July 9, 2002; 77 FR 60931, Oct. 5, 2012]

§ 2522.205 To whom must I apply the National Service Criminal History Check eligibility criteria?

You must apply the National Service Criminal History Check eligibility criteria to individuals serving in covered positions. A covered position is a position in which the individual receives an education award or a Corporation grant-funded living allowance, stipend, or salary.

[77 FR 60931, Oct. 5, 2012]

§ 2522.206 [Reserved]

§ 2522.207 How do I determine an individual's eligibility to serve in a covered position?

To determine an individual's eligibility to serve in a covered position, you must follow the procedures in part 2540 of this chapter.

[77 FR 60932, Oct. 5, 2012]

§ 2522.210 How are AmeriCorps participants recruited and selected?

(a) *Local recruitment and selection.* In general, AmeriCorps participants will be selected locally by an approved AmeriCorps program, and the selection

criteria will vary widely among the different programs. Nevertheless, AmeriCorps programs must select their participants in a fair and non-discriminatory manner which complies with part 2540 of this chapter. In selecting participants, programs must also comply with the recruitment and selection requirements specified in this section.

(b)(1) *National and State recruitment and selection.* The Corporation and each State Commission will establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved AmeriCorps positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The national and state recruitment and placement system will be designed and operated according to Corporation guidelines.

(2) *Dissemination of information.* The Corporation and State Commissions will disseminate information regarding available approved AmeriCorps positions through cooperation with secondary schools, institutions of higher education, employment service offices, community-based organizations, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*) and other State agencies that primarily serve qualified individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are qualified individuals with disabilities.

(c) *National leadership pool*—(1) *Selection and training.* From among individuals recruited under paragraph (b) of this section or nominated by service programs, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training will be provided by the Corporation directly or through a grant, contract, or cooperative agreement as the Corporation determines.

(2) *Emphasis on certain individuals.* In selecting individuals to receive leadership training under this provision, the Corporation will make special efforts to select individuals who have served—

(i) In the Peace Corps;

(ii) As VISTA volunteers;

(iii) As participants in AmeriCorps programs receiving assistance under parts 2520 through 2524 of this chapter;

(iv) As participants in National Service Demonstration programs that received assistance from the Commission on National and Community Service; or

(v) As members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) *Assignment.* At the request of a program that receives assistance, the Corporation may assign an individual who receives leadership training under paragraph (c)(1) of this section to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program will be considered to be a participant of the program.

§ 2522.220 What are the required terms of service for AmeriCorps participants?

(a) *Term of Service.* A term of service may be defined as:

(1) *Full-time service.* 1,700 hours of service during a period of not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years.

(3) *Reduced part-time term of service.* The Corporation may reduce the number of hours required to be served in order to receive an educational award for certain part-time participants serving in approved AmeriCorps positions. In such cases, the educational award will be reduced in direct proportion to the reduction in required hours of service. These reductions may be made for summer programs, for categories of participants in certain approved AmeriCorps programs and on a case-by-case, individual basis as determined by the Corporation.

(4) *Summer programs.* A summer program, in which less than 1700 hours of service are performed, are part-time programs.

(b) *Eligibility for subsequent term.* A participant will only be eligible to serve a subsequent term of service if

that individual has received a satisfactory performance review for any previous term of service in an approved AmeriCorps position, in accordance with the requirements of paragraph (d) of this section and §2526.15. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

(c) *Participant evaluation.* For the purposes of determining a participant's eligibility for an educational award as described in §2522.240(a) and eligibility to serve a second or additional term of service as described in paragraph (c) of this section, each AmeriCorps grantee is responsible for conducting a mid-term and end-of-term evaluation. A mid-term evaluation is not required for a participant who is released early from a term of service or in other circumstances as approved by the Corporation. The end-of-term evaluation should consist of:

(1) A determination of whether the participant:

(i) Successfully completed the required term of service described in paragraph (a) of this section, making the participant eligible for an educational award as described in §2522.240(a);

(ii) Was released from service for compelling personal circumstances, making the participant eligible for a pro-rated educational award as described in §2522.230(a)(2); or

(iii) Was released from service for cause, making the participant ineligible to receive an educational award for that term of service as described in §2522.230(b)(3); and

(2) A participant performance and conduct review to determine whether the participant's service was satisfactory, which will assess whether the participant:

(i) Has satisfactorily completed assignments, tasks, or projects, or, for those participants released from service early, whether the participant made a satisfactory effort to complete those assignments, tasks, or projects that the participant could reasonably have addressed in the time the participant served; and

(ii) Has met any other criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

(d) *Limitation.* The Corporation may set a minimum or maximum percentage of hours of a full-time, part-time, or reduced term of service described in paragraphs (a)(1),(a)(2), and (a)(3) of this section that a participant may engage in training, education, or other similar approved activities

(e) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program's ruling of unsatisfactory performance may file a grievance according to the procedures set forth in part 2540 of this chapter. If that grievance procedure or subsequent binding arbitration procedure finds that the participant did in fact satisfactorily complete a term of service, then that individual will be eligible to receive an educational award and/or be eligible to serve a second term of service.

(f) *Extension of term for disaster purposes.* If approved by the Corporation, a program may permit an AmeriCorps participant performing service directly related to disaster relief efforts to continue in a term of service for a period of up to 90 days beyond the period otherwise specified. A period of service performed by an AmeriCorps participant in an originally agreed-upon term of service and service performed under this paragraph shall constitute a single term of service for the purposes of §2526.50(a) of this chapter.

[59 FR 13796, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

§ 2522.230 Under what circumstances may an AmeriCorps participant be released from completing a term of service, and what are the consequences?

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances, as determined by the program, or for cause.

(a) *Release for compelling personal circumstances.*

(1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(6) and (a)(7) of this section, that the participant is unable to complete the term

of service because of compelling personal circumstances, if the participant has otherwise performed satisfactorily and has completed at least fifteen percent of the agreed term of service.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(4) Compelling personal circumstances include:

(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(5) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(6) As an alternative to releasing a participant, an AmeriCorps*State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps*State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(6) An individual's eligibility for a subsequent term of service in AmeriCorps will not be affected by release for cause from a prior term of

service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.220(c)(2) for the period served in the prior term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the terms of service described in § 2522.235 for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

(e) *Release prior to serving 15 percent of a term of service.* If a participant is released for reasons other than misconduct prior to completing 15 percent of a term of service, the term will not be considered one of the terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[64 FR 37413, July 12, 1999, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?

(a) *General limitation.* An individual may receive the benefits described in § 2522.240 through § 2522.250 for no more than four terms of service in an AmeriCorps State and National program, regardless of whether those terms were served on a full-, part-, or reduced part-time basis, consistent with the limitations in § 2526.50.

(b) *Early release.* Except as provided in paragraph (c) of this section, a term of service from which an individual is released for compelling personal circumstances or for cause counts as one of the terms of service for which an individual may receive the benefits described in § 2522.240 through § 2522.250.

(c) *Release prior to serving fifteen percent of a term.* If a person is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the terms of service for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[75 FR 51410, Aug. 20, 2010]

§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps education awards.* An individual serving in an approved AmeriCorps State and National position may receive an education award from the National Service Trust upon successful completion of each of no more than four terms of service as defined in § 2522.220, consistent with the limitations in § 2526.50.

(b) *Living allowances*—(1)*Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided pursuant to § 2521.30 of this chapter, including an AmeriCorps program that receives educational awards only pursuant to § 2521.30(c) of this chapter, will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under § 105 of the Domestic Volunteer Service

Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993).

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2522.110(a)(3), the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the maximum, subject to the following conditions: (i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance for programs.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Waiver or reduction of living allowance by participants.* A participant may waive all or part of the receipt of a living allowance. The participant may revoke this waiver at any time during the participant's term of service. If the participant revokes the living allowance waiver, the participant may begin receiving his or her living allowance prospective from the date of the revocation; a participant may not receive any portion of the living allowance that may have accrued during the waiver period.

(6) *Limitation on Federal share.* The Federal share, including Corporation and other Federal funds, of the total amount provided to an AmeriCorps participant for a living allowance is limited as follows:

(i) In no case may the Federal share exceed 85% of the minimum required living allowance enumerated in paragraph (b)(1) of this section.

(ii) For professional corps described in paragraph (b)(2)(i) of this section, Corporation and other Federal funds may be used to pay for no portion of the living allowance.

(iii) If the minimum living allowance requirements has been waived or reduced pursuant to paragraph (b)(4) of this section and the amount of the living allowance provided to a participant has been reduced correspondingly—

(A) In general, the Federal share may not exceed 85% of the reduced living allowance; however,

(B) If a participant is serving in a program that provides room or board, the Corporation will consider on a case-by-case basis allowing the portion of that living allowance that may be paid using Corporation and other Federal funds to be between 85% and 100%.

(c) *Financial benefits for participants during an extended term of service for disaster purposes.* An AmeriCorps participant performing extended service under § 2522.220(f) may continue to receive a living allowance under paragraph (b) and other benefits under § 2522.250, but may not receive an additional AmeriCorps educational award under paragraph (a).

[59 FR 13796, Mar. 23, 1994, as amended at 71 FR 10611, Mar. 2, 2006; 73 FR 53760, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

§ 2522.245 How are living allowances disbursed?

A living allowance is not a wage and programs may not pay living allowances on an hourly basis. Programs

must distribute the living allowance at regular intervals and in regular increments, and may increase living allowance payments only on the basis of increased living expenses such as food, housing, or transportation. Living allowance payments may only be made to a participant during the participant's term of service and must cease when the participant concludes the term of service. Programs may not provide a lump sum payment to a participant who completes the originally agreed-upon term of service in a shorter period of time.

[73 FR 53760, Sept. 17, 2008]

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

(a) *Child Care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she:

(i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)).

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

(4) *Corporation share.* The Corporation will pay 100 percent of the child care allowance, or, if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

(b) *Health care.* (1) Grantees must provide to all eligible participants who meet the requirements of paragraph (b)(2) of this section health care coverage that—

(i) Provides the minimum benefits determined by the Corporation;

(ii) Provides the alternative minimum benefits determined by the Corporation; or

(iii) Does not provide all of either the minimum or the alternative minimum benefits but that has a fair market value equal to or greater than the fair market value of a policy that provides the minimum benefits.

(2) *Participant eligibility.* A full-time participant is eligible for health care benefits if he or she is not otherwise covered by a health benefits package providing minimum benefits established by the Corporation at the time he or she is accepted into a program. If, as a result of participation, or if, during the term of service, a participant demonstrates loss of coverage through no deliberate act of his or her own, such as parental or spousal job loss or disqualification from Medicaid, the participant will be eligible for health care benefits.

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

(ii) The Corporation will pay no share of the cost of a policy that does not provide the minimum or alternative minimum benefits described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

[59 FR 13796, Mar. 23, 1994, as amended at 70 FR 39600, July 8, 2005]

Subpart C—Application Requirements

§ 2522.300 What are the application requirements for AmeriCorps program grants?

All eligible applicants seeking AmeriCorps program grants must—

(a) Provide a description of the specific program(s) being proposed, including the type of program and of how it meets the minimum program requirements described in § 2522.100; and

(b) Comply with any additional requirements as specified by the Corporation in the application package.

§ 2522.310 What are the application requirements for AmeriCorps educational awards only?

(a) Eligible applicants may apply for AmeriCorps educational awards only for one of the following eligible service positions: (1) A position for a participant in an AmeriCorps program that:

(i) Is carried out by an entity eligible to receive support under part 2521 of this chapter;

(ii) Would be eligible to receive assistance under this part, based on criteria established by the Corporation, but has not applied for such assistance;

(2) A position facilitating service-learning in a program described in parts 2515 through 2519 of this chapter;

(3) A position involving service as a crew leader in a youth corps program or a similar position supporting an AmeriCorps program; and

(4) Such other AmeriCorps positions as the Corporation considers to be appropriate.

(b) Because programs applying only for AmeriCorps educational awards must, by definition, meet the same basic requirements as other approved AmeriCorps programs, applicants must comply with the same application requirements specified in § 2522.300.

§ 2522.320 [Reserved]

§ 2522.330 [Reserved]

§ 2522.340 How will I know if two projects are the same?

The Corporation will consider two projects to be the same if the Corporation cannot identify a meaningful difference between the two projects based on a comparison of the following characteristics, among others:

(a) The objectives and priorities of the projects;

(b) The nature of the services provided;

(c) The program staff, participants, and volunteers involved;

(d) The geographic locations in which the services are provided;

(e) The populations served; and

(f) The proposed community partnerships.

[73 FR 53760, Sept. 17, 2008]

Subpart D—Selection of AmeriCorps Programs

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

The Corporation uses a multi-stage process, which may include review by panels of experts, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

[70 FR 39600, July 8, 2005]

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

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

[70 FR 39600, July 8, 2005]

§ 2522.415 How does the grant selection process work?

The selection process includes:

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

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

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

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

[70 FR 39600, July 8, 2005]

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

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

(a) Your program design;

(b) Your organizational capability; and

(c) Your program's cost-effectiveness and budget adequacy.

[70 FR 39600, July 8, 2005]

§ 2522.425 [Reserved]

§ 2522.430 [Reserved]

§ 2522.435 [Reserved]

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

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

Category	Percentage
Program design	50
Organizational capability	25
Cost-effectiveness and budget adequacy	25

[70 FR 39600, July 8, 2005]

§ 2522.445 [Reserved]

§ 2522.448 [Reserved]

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

Following the scoring of proposals under § 2522.440 of this part, the Corporation will seek to ensure that its portfolio of approved programs includes a meaningful representation of proposals that address one or more of the following priorities:

(a) *Program models:* (1) Programs operated by community organizations, including faith-based organizations, or programs that support the efforts of community organizations, including faith-based organizations, to solve local problems;

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

(b) *Program activities:* (1) Programs that serve or involve children and youth, including mentoring of disadvantaged youth and children of prisoners;

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

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

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

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

(6) Programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities;

(7) Programs that foster opportunities for Americans born in the post-World War II baby boom to serve and volunteer in their communities; and

(8) Programs that involve community-development by finding and using local resources, and the capacities, skills, and assets of lower-income people and their community, to rejuvenate their local economy, strengthen public and private investments in the community, and help rebuild civil society.

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

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

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

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

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

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

(6) A rural community, as demonstrated by Federal and State data; or

(7) A severely economically distressed community, as demonstrated by Federal and State data.

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

[70 FR 39600, July 8, 2005]

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

The Corporation posts discretionary funding opportunities addressing the Corporation's selection preferences and additional requirements on our website at *www.nationalservice.gov* and at *www.grants.gov* in advance of grant competitions

[70 FR 39600, July 8, 2005]

§ 2522.460 To what extent may the Corporation or a State commission consider priorities other than those stated in these regulations or the Notice of Funding Availability?

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

(b) A State may apply priorities different than those of the Corporation in selecting its formula programs.

[70 FR 39600, July 8, 2005]

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

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

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

(b) While the rankings you provide will not be determinative in the grant selection process, and the Corporation will not be bound by them, we will consider them in our selection process.

[70 FR 39600, July 8, 2005]

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

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs, and projects in rural, high poverty, and economically distressed areas.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following for purposes of clarifying or verifying information in a proposal, including conducting due diligence to ensure an applicant's ability to manage Federal funds:

(1) For an applicant that has previously received a Corporation grant, any information or records the applicant submitted to the Corporation, or that the Corporation has in its system of records, in connection with its previous grant (*e.g.* progress reports, site visit reports, financial status reports, audits, HHS Account Payment Data Reports, Federal Cash Transaction Reports, timeliness of past reporting, etc.);

(2) Program evaluations;

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

(4) Other Corporation internal information, including information from the Office of Inspector General, administrative standards for State commissions, and reports on program training and technical assistance;

(5) IRS Tax Form 990;

(6) An applicant organization's annual report;

(7) Information relating to the applicant's financial management from Corporation records;

(8) Member satisfaction indicators;

(9) Publicly available information including:

(i) Socio-economic and demographic data, such as poverty rate, unemployment rate, labor force participation, and median household income;

(ii) Information on where an applicant and its activities fall on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(iii) Information on the nonprofit and philanthropic community, such as charitable giving per capita;

(iv) Information from an applicant organization's website; and

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

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

(c) Before approving a program grant to a State commission, the Corporation will consider a State commission's capacity to manage and monitor grants.

[70 FR 39600, July 8, 2005]

§ 2522.475 To what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?

You must ensure that the selection criteria you use include the following criteria:

(a) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(b) The innovative aspects of the national service program, and the feasibility of replicating the program.

(c) The sustainability of the national service program.

(d) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(e) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(f) The extent to which projects would be conducted in one of the areas listed in § 2522.450(c)(1) through (5) of this subpart.

(g) In the case of applicants other than States, the extent to which the application is consistent with the application of the State in which the projects would be conducted.

(h) Such other criteria as the Corporation considers to be appropriate, following appropriate notice.

[70 FR 39600, July 8, 2005]

§ 2522.480 Can a State's application for formula funds be rejected?

Yes. Formula funds are not an entitlement.

(a) *Notification.* If the Corporation rejects an application submitted by a State Commission under part 2550 of this chapter for funds described in § 2521.30 of this chapter, the Corporation will promptly notify the State Commission of the reasons for the rejection of the application.

(b) *Revision.* The Corporation will provide a State Commission notified under paragraph (a) of this section with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation will provide technical assistance to the State Commission as part of the resubmission process. The Corporation will promptly reconsider an application resubmitted under this paragraph.

(c) *Redistribution.* The amount of any State's allotment under § 2521.30(a) of this chapter for a fiscal year that the

Corporation determines will not be provided for that fiscal year will be available for redistribution by the Corporation to the States, Territories and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39600, July 8, 2005]

§ 2522.485 How do I calculate my program's budgeted Corporation cost per member service year (MSY)?

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

[70 FR 39603, July 8, 2005]

Subpart E—Evaluation Requirements

§ 2522.500 What is the purpose of this subpart?

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

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

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

[70 FR 39603, July 8, 2005]

§ 2522.510 To whom does this subpart apply?

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

[70 FR 39603, July 8, 2005]

§ 2522.520 What special terms are used in this subpart?

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

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

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

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

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

(e) *Internal evaluation* means an evaluation that a grantee performs in-house without the use of an independent external evaluator.

(f) *End-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome could be the percent and number of students who have improved their reading scores to

grade-level, or other specific measures of academic achievement.

(g) *Grantee* includes subgrantees, programs, and projects.

(h) *National performance measures* are performance measures that the Corporation develops.

(i) *You* refers to a grantee or applicant organization.

[70 FR 39603, July 8, 2005; 70 FR 48882, Aug. 22, 2005]

§ 2522.530 May I use the Corporation's program grant funds for performance measurement and evaluation?

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

[70 FR 39603, July 8, 2005]

§ 2522.540 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?

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

[70 FR 39603, July 8, 2005]

PERFORMANCE MEASURES: REQUIREMENTS AND PROCEDURES

§ 2522.550 What basic requirements must I follow in measuring performance under my grant?

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measure and evaluation requirements. In addition, you must:

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

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

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

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

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

[70 FR 39603, July 8, 2005]

§ 2522.560 What are performance measures and performance measurement?

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

(b) Performance measurement is the process of regularly measuring the services provided by your program and the effect your program has in communities or in the lives of members or community beneficiaries.

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

[70 FR 39603, July 8, 2005]

§ 2522.570 What information on performance measures must my grant application include?

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

(a) Proposed performance measures, as described in § 2522.580 and § 2522.590 of this part.

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

(c) Actual performance data, where available, as follows:

(i) For continuation programs, performance data over the course of the grant to date; and

(ii) For recompeting programs, performance data for the preceding three-year grant cycle.

[70 FR 39603, July 8, 2005]

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

(a) When applying for funds, you must submit, at a minimum, the following performance measures:

(1) One set of aligned performance measures (one output, one intermediate-outcome, and one end-outcome) that capture the results of your program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity; and

(2) Any national performance measures the Corporation may require, as specified in paragraph (b) of § 2522.590.

(b) For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students that participated in a tutoring program;

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

(3) End-Outcome: Number and percent of students who have improved their reading score to grade level.

(c) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past. Any performance measures you submit beyond what is required in paragraph (a)(1) of this section may or may not be aligned sets of measures.

[70 FR 39603, July 8, 2005]

§ 2522.590 Who develops my performance measures?

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

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

[70 FR 39603, July 8, 2005]

§ 2522.600 Who approves my performance measures?

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all non-formula programs. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of your grant award.

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

[70 FR 39603, July 8, 2005]

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

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

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

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

[70 FR 39603, July 8, 2005]

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

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

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

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

(c) At a minimum you are required to report on outputs at the end of year one and outputs and intermediate outcomes at the end of years two and

three. We encourage you to exceed these minimum requirements.

[70 FR 39603, July 8, 2005, as amended at 73 FR 53760, Sept. 17, 2008]

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

If you are not on track to meet your performance measures, you must develop and submit to the Corporation, or the State commission for formula programs, a corrective action plan, consistent with paragraph (a) of this section, or submit a request to the Corporation, or the State commission for formula programs, consistent with paragraph (b) of this section, to amend your requirements under the circumstances described in § 2522.640 of this subpart.

(a) Your corrective action plan must be in writing and include all of the following:

(1) The factors impacting your performance goals;

(2) The strategy you are using and corrective action you are taking to get back on track toward your established performance measures; and

(3) The timeframe in which you plan to achieve getting back on track with your performance measures.

(b) A request to amend your performance measures must include all of the following:

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

(2) How you have been tracking performance measures;

(3) Evidence of the corrective action you have taken;

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

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

(c) You must submit your plan under paragraph (a) of this section, or your request under paragraph (b) of this section, within 30 days of determining that you are not on track to meeting your performance measures.

(d) If you are a formula program, the State commission that approves the plan under paragraph (a) of this section or the request to amend your performance measures under paragraph (b) of this section, must forward an information copy to the Corporation's AmeriCorps program office within 15 days of approving the plan or the request.

[70 FR 39603, July 8, 2005]

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

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

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

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

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

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

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

(b) [Reserved]

[70 FR 39603, July 8, 2005]

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

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

under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

(1) Reduce the amount of your grant;

(2) Suspend or terminate your grant;

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

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

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

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

[70 FR 39603, July 8, 2005]

EVALUATING PROGRAMS: REQUIREMENTS AND PROCEDURES

§ 2522.700 How does evaluation differ from performance measurement?

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

(b) Performance measurement is the process of systematically and regularly collecting and monitoring data related to the direction of observed changes in communities, participants (members), or end beneficiaries receiving your program's services. It is intended to provide an indication of your program's operations and performance. In contrast to evaluation, it is not intended to establish a causal relationship between your program and a desired (or undesired) program outcome. For example, a performance measure for a literacy program may include the percentage of students receiving services from your program who increase their reading ability from ''below grade level'' to ''at or above grade level''. This measure indicates something good is happening to your program's service beneficiaries, but it does not indicate that the change can be wholly attributed to your program's services.

[70 FR 39603, July 8, 2005]

§ 2522.710 What are my evaluation requirements?

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

(b) If you are a State competitive or direct Corporation AmeriCorps grantee (other than an Education Award Program grantee), and your average annual Corporation program grant is $500,000 or more, you must arrange for an independent evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation AmeriCorps grantee whose average annual Corporation program grant is less than $500,000, or an Education Award Program grantee, you must conduct an internal evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

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

(e) Grantees must cooperate fully with all Corporation evaluation activities.

[70 FR 39603, July 8, 2005]

§ 2522.720 How many years must my evaluation cover?

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

(b) If you are a State competitive or direct Corporation grantee, your evaluation must cover a minimum of one year but may cover longer periods.

[70 FR 39603, July 8, 2005]

§ 2522.730 How and when do I submit my evaluation to the Corporation?

(a) If you are an existing grantee recompeting for AmeriCorps funds for the first time, you must submit a summary of your evaluation efforts or plan to date, and a copy of any evaluation that has been completed, as part of your application for funding.

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

[70 FR 39603, July 8, 2005]

§ 2522.740 How will the Corporation use my evaluation?

The Corporation will consider the evaluation you submit with your application as follows:

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

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

[70 FR 39603, July 8, 2005]

§ 2522.800 How will the Corporation evaluate individual AmeriCorps programs?

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award;

(b) The extent to which the program is cost-effective; and

(c) The effectiveness of the program in meeting the following legislative objectives: (1) Providing direct and demonstrable services and projects that benefit the community by addressing educational, public safety, human, or environmental needs;

(2) Recruiting and enrolling diverse participants consistent with the requirements of part 2540 of this chapter, based on economic background, race, ethnicity, age, gender, marital status, education levels, and disability;

(3) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and future enrollment in and completion of increasingly higher levels of education;

(4) Encouraging each participant to engage in public and community service after completion of the program based on career choices and participation in other service programs;

(5) Promoting an ethic of active and productive citizenship among participants;

(6) Supplying additional volunteer assistance to community agencies without providing more volunteers than can be effectively utilized;

(7) Providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers; and

(8) Other criteria determined and published by the Corporation.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

§ 2522.810 What will the Corporation do to evaluate the overall success of the AmeriCorps programs?

(a) The Corporation will conduct independent evaluations of programs, including in-depth studies of selected programs. These evaluations will consider the opinions of participants and members of the community where services are delivered. Where appropriate these studies will compare participants with individuals who have not participated in service programs. These evaluations will: (1) Study the extent to which the national service impacts involved communities;

(2) Study the extent to which national service increases positive attitudes among participants regarding the

responsibilities of citizens and their role in solving community problems;

(3) Study the extent to which national service enables participants to afford post-secondary education with fewer student loans;

(4) Determine the costs and effectiveness of different program models in meeting program objectives including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative non-federally funded vouchers or post-service benefits, and programs utilizing individual placements and teams;

(5) Determine the impact of programs in each State on the ability of VISTA and National Senior Volunteer Corps, each regular and reserve component of the Armed Forces, and the Peace Corps to recruit individuals residing in that State; and

(6) Determine the levels of living allowances paid in all AmeriCorps programs and American Conservation and Youth Corps, individually, by State, and by region and determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(b) The Corporation will also determine by June 30, 1995: (1) Whether the State and national priorities designed to meet educational, public safety, human, or environmental needs are being addressed;

(2) Whether the outcomes of both stipended and nonstipended service programs are defined and measured appropriately;

(3) Whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at risk youth, or whether such programs should include a mix of individuals, including individuals from middle and upper income families;

(4) The role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(5) The income distribution of AmeriCorps participants, to determine the level of participation of economically disadvantaged individuals. The total income of participants will be determined as of the date the participant was first selected to participate in a program and will include family total income unless the evaluating entity determines that the participant was independent at the time of selection. Definitions for ''independent'' and ''total income'' are those used in section 480(a) of the Higher Education Act of 1965;

(6) The amount of assistance provided under the AmeriCorps programs that has been expended for projects conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special economic incentives or are otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available; and

(7) The implications of the results of these studies as appropriate for authorized funding levels.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

§ 2522.820 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2522.540. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees that receive assistance under this chapter must comply with the provisions of paragraph (a) of this section.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

Subpart F—Program Management Requirements for Grantees

SOURCE: 70 FR 39606, July 8, 2005, unless otherwise noted.

§ 2522.900 What definitions apply to this subpart?

Tutor is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group sessions and activities that build on the academic strengths of students in kindergarten through 12th grade, and target their academic needs. A tutor does not include someone engaged in other academic support activities, such as mentoring and after-school program support, whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

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

If the tutor is:	Then the tutor must meet the following qualifications:
(a) Is considered to be an employee of the Local Education Agency or school, as determined by State law.	Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58
(b) Is not considered to be an employee of the Local Education Agency or school, as determined by State law.	(1) High School diploma or its equivalent, or a higher degree; and
	(2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart.

[59 FR 13796, Mar. 23, 1994, as amended at 74 FR 46506, Sept. 10, 2009]

§ 2522.920 Are there any exceptions to the qualifications requirements?

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a K–12 student tutoring younger children in the school or after school as part of a structured, school-managed cross-grade tutoring program.

§ 2522.930 [Reserved]

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

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

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart, and certify that selected tutors meet the requirements in § 2522.910.

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

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

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

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

[70 FR 39606, July 8, 2005, as amended at 74 FR 46506, Sept. 10, 2009]

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

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

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

PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

Sec.
2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?
2523.20 Which Federal agencies may apply for such funds?
2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?
2523.40 For what purposes should Federal agencies use AmeriCorps program funds?
2523.50 What types of grants are Federal agencies eligible to receive?
2523.60 May Federal agencies enter into partnerships or participate in consortia?
2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?
2523.80 Are there restrictions on the use of Corporation funds?
2523.90 Is there a matching requirement for Federal agencies?
2523.100 Are participants in programs operated by Federal agencies Federal employees?
2523.110 Can Federal agencies submit multiple applications?
2523.120 Must Federal agencies consult with State Commissions?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13804, Mar. 23, 1994, unless otherwise noted.

§ 2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?

Yes. Federal agencies may apply for and receive AmeriCorps funds under parts 2521 and 2522 of this chapter, and they are eligible to receive up to one-third of the funds available for competitive distribution under § 2521.30(b)(3) of this chapter. The Corporation may enter into a grant, contract or cooperative agreement with another Federal agency to support an AmeriCorps program carried out by the agency. The Corporation may transfer funds available to it to other Federal agencies.

§ 2523.20 Which Federal agencies may apply for such funds?

The Corporation will consider applications only from Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies can only apply through the central department or agency; however, it is possible for the department or agency to submit an application proposing more than one program.

§ 2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?

Yes, except as provided in § 2523.90. Federal agency programs must meet the same requirements and serve the same purposes as all other applicants seeking support under part 2522 of this chapter.

§ 2523.40 For what purposes should Federal agencies use AmeriCorps program funds?

AmeriCorps funds should enable Federal agencies to establish programs that leverage agencies' existing resources and grant-making powers toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan to ultimately support new service initiatives out of their own budgets and appropriations.

§ 2523.50 What types of funds are Federal agencies eligible to receive?

Federal agencies may apply for planning and operating funds subject to the terms established by the Corporation in § 2521.20 of this chapter, except that operating grants will be awarded with the expectation that the Federal agencies will support the proposed programs from their own budgets once the Corporation grant(s) expire.

§ 2523.60 May Federal agencies enter into partnerships or participate in consortia?

Yes. Such partnerships or consortia may consist of other Federal agencies, Indian Tribes, subdivisions of States, community based organizations, institutions of higher education, or other non-profit organizations. Partnerships and consortia must be approved by the Corporation.

§ 2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?

Yes. The Corporation will give special consideration to those applications that address the national priorities established by the Corporation. The Corporation may also give special consideration to those applications that demonstrate the agency's intent to leverage its own funds through a Corporation-approved partnership or consortium, by raising other funds from Federal or non-Federal sources, by giving grantees incentives to build service opportunities into their programs, by committing appropriate in-kind resources, or by other means.

§ 2523.80 Are there restrictions on the use of Corporation funds?

Yes. The supplantation and nondisplacement provisions specified in part 2540 of this chapter apply to the Federal AmeriCorps programs supported with such assistance.

§ 2523.90 Is there a matching requirement for Federal agencies?

No. A Federal agency is not required to match funds in programs that receive support under this chapter. However, Federal agency subgrantees are required to match funds in accordance with the requirements of § 2521.30(g) and § 2522.240(b)(6) of this chapter.

[59 FR 13804, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

§ 2523.100 Are participants in programs operated by Federal agencies Federal employees?

No. Participants in these programs have the same employee status as participants in other approved AmeriCorps programs, and are not considered Federal employees, except for the purposes of the Family and Medical Leave Act as specified in § 2540.220(b) of this chapter.

§ 2523.110 Can Federal agencies submit multiple applications?

No. The Corporation will only consider one application from a Federal agency for each AmeriCorps competition. The application may propose more than one program, however, and the Corporation may choose to fund any or all of those programs.

§ 2523.120 Must Federal agencies consult with State Commissions?

Yes. Federal agencies must provide a description of the manner in which the proposed AmeriCorps program(s) is coordinated with the application of the State in which the projects will be conducted. Agencies must also describe proposed efforts to coordinate AmeriCorps activities with State Commissions and other funded AmeriCorps programs within the State in order to build upon existing programs and not duplicate efforts.

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

Sec.

2524.10 For what purposes will technical assistance and training funds be made available?
2524.20 What are the guidelines for program development assistance and training grants?
2524.30 What are the guidelines for challenge grants?
2524.40 What are the guidelines for grants to involve persons with disabilities?
2524.50 What are the guidelines for assistance with disaster relief?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13805, Mar. 23, 1994, unless otherwise noted.

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, religious organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

(1) To develop AmeriCorps programs; or

(2) To apply for assistance under parts 2521 and 2522 of this chapter or under a grant program conducted using such assistance.

(b) In addition, the Corporation may provide program development assistance and conduct, directly or by grant or contract, appropriate training programs regarding AmeriCorps in order to—

(1) Improve the ability of AmeriCorps programs assisted under parts 2521 and 2522 of this chapter to meet educational, public safety, human, or environmental needs in communities—

(i) Where services are needed most; and

(ii) Where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) Promote leadership development in such programs;

(3) Improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) Develop the management and budgetary skills of program operators;

(5) Provide for or improve the training provided to the participants in such programs;

(6) Encourage AmeriCorps programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices; and

(7) Assist in such other manner as the Corporation may specify.

[59 FR 13805, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

§ 2524.20 What are the guidelines for program development assistance and training grants?

(a) *Eligibility.* States, Federal agencies, Indian tribes, public or private nonprofit agencies, institutions of higher education, for-profit businesses, and individuals may apply for assistance under this section.

(b) *Duration.* A grant made under this section will be for a term of up to one year and is renewable.

(c) *Application requirements.* Eligible applicants must comply with the requirements specified in the Corporation's application package.

§ 2524.30 What are the guidelines for challenge grants?

(a) *Purpose.* The purpose of these grants is to challenge high quality AmeriCorps programs to diversify their funding base by matching private dollars they have raised with Corporation support. The Corporation will provide not more than $1 for each $1 raised in cash by the program from private sources in excess of amounts otherwise required to be provided by the program to satisfy the matching funds requirements specified under § 2521.30(g) of this chapter.

(b) *Eligibility.* Only Corporation grantees that meet all of the following eligibility criteria may apply for challenge grants: (1) They are funded under parts 2520 through 2523 of this chapter.

(2) They are high quality programs with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) They have operated with Corporation funds for at least six months.

(4) They have secured the minimum matching funds required by §§ 2521.30(g), 2522.240(b)(6), 2522.250(a)(4), and 2522.250(b)(2) of this chapter.

(c) *Allowable program activities.* Challenge grants are intended to provide special opportunities for national and community service programs to enroll additional participants or undertake other activities specified by the Corporation.

(d) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(e) *Limitation on use of the funds.* Each year the Corporation will establish a maximum award that a program may receive as a challenge grant.

(f) *Allocation of funds.* The Corporation will determine annually how much funding will be allocated to challenge grants from funds appropriated for AmeriCorps programs.

[59 FR 13805, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

§ 2524.40 What are the guidelines for grants to involve persons with disabilities?

(a) *Purpose.* There are two general purposes for these grants: (1) To assist

AmeriCorps grantees in placing applicants who require reasonable accommodation (as defined in section 101(9) of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act, 42 U.S.C. 12102(1)) in an AmeriCorps program; and

(2) To conduct outreach activities to individuals with disabilities to recruit them for participation in AmeriCorps programs.

(b) *Eligibility*—(1) *Placement, accommodation, and auxiliary services.* Eligibility for assistance under this part is limited to AmeriCorps programs that: (i) Receive competitive funding from the Corporation under §2521.30(a)(3) or 2521.30(b)(3) of this chapter; and

(ii) Demonstrate that the program has received a substantial number of applications for placement from persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990), or auxiliary aids and services (as defined in section 3(1) of such Act) in order to perform national service; and

(iii) Demonstrate that additional funding would assist the program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(2) *Outreach.* Corporation grantees and any public or private nonprofit organization may apply for funds to conduct outreach to individuals with disabilities to recruit them for participation in AmeriCorps programs. Outreach funds can also be used by any organization to assist AmeriCorps programs in adapting their programs to encourage greater participation by individuals with disabilities.

(c) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

§ 2524.50 What are the guidelines for assistance with disaster relief?

(a) *Purpose.* Disaster relief funds are intended to provide emergency assistance not otherwise available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

(b) *Eligibility.* Any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a State or Federal agency) that is supported by the Corporation may apply for disaster relief grants.

(c) *Application process.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(d) *Waivers.* In appropriate cases, due to the limited nature of disaster activities, the Corporation may waive specific program requirements such as matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

Sec.

2525.10 What is the National Service Trust?
2525.20 Definitions.

AUTHORITY: 42 U.S.C. 12601–12606.

SOURCE: 59 FR 30710, June 15, 1994, unless otherwise noted.

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

[64 FR 37414, July 12, 1999]

§ 2525.20 Definitions.

In addition to the definitions in §2510.20 of this chapter, the following definitions apply to terms used in parts 2525 through 2529 of this chapter:

AmeriCorps education award. For the purposes of this section, the term *AmeriCorps education award* means the financial assistance available under parts 2526 through 2528 of this chapter

for which an individual in an approved AmeriCorps position may be eligible.

Cost of attendance. The term *cost of attendance* has the same meaning as in title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

Current educational expenses. The term *current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

Economically disadvantaged youth. For the purposes of this section, the phrase *economically disadvantaged youth* means a child who is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

Education award. For the purposes of this section, the term *education award* refers to the financial assistance available under parts 2526 through 2528 of this chapter, including AmeriCorps education awards, Silver Scholar education awards, and Summer of Service education awards.

Educational expenses at a Title IV institution of higher education. The term *educational expenses* means—

(1) Cost of attendance as determined by the institution; or

(2) Other costs at a title IV institution of higher education attributable to a non-title IV educational course as follows:

(i) Tuition and fees normally assessed a student for a course or program of study by the institution, including costs for rental or purchase of any books or supplies required of all students in the same course of study;

(ii) For a student engaged in a course of study by correspondence, only tuition and fees and, if required, books, and supplies;

(iii) For a student with a disability, an allowance (as determined by the institution) for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(iv) For a student engaged in a work experience under a cooperative education program or course, an allowance for reasonable costs associated with such employment (as determined by the institution).

G.I. Bill approved program. For the purposes of this section, a *G.I. Bill Approved Program* is an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill (38 U.S.C. 3670 *et seq.*) for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs.

Holder. The term *holder* means—

(1) The original lender; or

(2) Any other entity to whom a loan is subsequently sold, transferred, or assigned if such entity acquires a legally enforceable right to receive payments from the borrower.

Institution of higher education. For the purposes of parts 2525 through 2529 of this chapter, the term *institution of higher education* has the same meaning given the term in section 481(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)).

Period of enrollment. Period of enrollment means the period that the title IV institution has established for which institutional charges are generally assessed (i.e., length of the student's course, program, or academic year.)

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*), or any other loan designated as such by Congress. This includes, but is not necessarily limited to, the following:

(1) *Federal Family Education Loans.* (i) Subsidized and Unsubsidized Stafford Loans.

(ii) Supplemental Loans to Students (SLS).

(iii) Federal Consolidation Loans.

(iv) Guaranteed Student Loans (predecessor to Stafford Loans).

(v) Federally Insured Student Loans (FISL).

(2) *William D. Ford Federal Direct Loans.* (i) Direct Subsidized and Unsubsidized Stafford Loans.

(ii) Direct Subsidized and Unsubsidized Ford Loans.

(iii) Direct Consolidation Loans.

(3) *Federal Perkins Loans.* (i) National Direct Student Loans.

(ii) National Defense Student Loans.

(4) *Public Health Service Act Loans.* (i) Health Education Assistance Loans (HEAL).

(ii) Health Professions Student Loans (HPSL).

(iii) Loans for Disadvantaged Students (LDS).

(iv) Nursing Student Loans (NSL).

(v) Primary Care Loans (PCL).

Silver Scholar education award. For the purposes of this section, the term *Silver Scholar education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Silver Scholar position may be eligible.

Summer of Service education award. For the purposes this section, the term *Summer of Service education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved Summer of Service position may be eligible.

Term of service. The term *term of service* means—

(1) For an individual serving in an approved AmeriCorps position, one of the terms of service specified in §2522.220 of this chapter;

(2) For an individual serving in an approved Silver Scholar position, not less than 350 hours during a one-year period; and

(3) For an individual serving in an approved Summer of Service position, not less than 100 hours during the summer months of a single year.

[59 FR 30711, June 15, 1994, as amended at 64 FR 37414, July 12, 1999; 65 FR 77821, Dec. 13, 2000; 67 FR 45360, July 9, 2002; 75 FR 51410, Aug. 20, 2010]

PART 2526—ELIGIBILITY FOR AN EDUCATION AWARD

Sec.

2526.10 Who is eligible to receive an education award from the National Service Trust?
2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?
2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?
2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?
2526.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?
2526.40 What is the time period during which an individual may use an education award?
2526.50 Is there a limit on the total amount of education awards an individual may receive?
2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?
2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?
2526.70 What are the effects of an erroneous certification of successful completion of a term of service?

AUTHORITY: 42 U.S.C. 12601–12604, 12606.

SOURCE: 59 FR 30711, June 15, 1994, unless otherwise noted.

§2526.10 Who is eligible to receive an education award from the National Service Trust?

(a) *General.* An individual is eligible to receive an education award from the National Service Trust if the organization responsible for the individual's supervision in a national service program certifies that the individual—

(1) Met the applicable eligibility requirements for the approved AmeriCorps position, approved Silver Scholar position, or approved Summer of Service position, as appropriate, in which the individual served;

(2) (i) For an AmeriCorps education award, successfully completed the required term of service in the approved national service position;

(ii) For a partial AmeriCorps education award, completed at least 15 percent of the originally-approved term of service, and performed satisfactorily prior to being granted a release for compelling personal circumstances consistent with § 2522.230(a);

(iii) For a Summer of Service education award, successfully completed the required term of service in a Summer of Service position; or

(iv) For a Silver Scholar education award, successfully completed the required term of service in a Silver Scholar position; and

(3) Is a citizen, national, or lawful permanent resident alien of the United States.

(b) *High school diploma or equivalent.* To use an education award, an individual must—

(1) Have received a high school diploma or its equivalent; or

(2) Be enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) and meet the requirements of subsection of section 484; or

(3) Have received a waiver described in § 2522.200(b) of this chapter.

(c) *Written declaration regarding high school diploma sufficient for disbursement.* For purposes of disbursing an education award, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (b) of this section relating to high school education, no additional documentation is needed.

(d) *Prohibition on duplicate benefits.* An individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(e) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

[64 FR 37414, July 12, 1999, as amended at 67 FR 45361, July 9, 2002; 75 FR 51411, Aug. 20, 2010]

§ 2526.15 Upon what basis may an organization responsible for the supervision of a national service participant certify that the individual successfully completed a term of service?

(a) An organization responsible for the supervision of an individual serving in an AmeriCorps State and National position must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation conducted pursuant to § 2522.220(d).

(b) An organization responsible for the supervision of an individual serving in a program other than AmeriCorps State and National must determine whether an individual successfully completed a term of service based upon an end-of-term evaluation that examines whether the individual satisfies all of the following conditions:

(1) Completed the required number of service hours for the term of service;

(2) Satisfactorily performed on assignments, tasks, or projects; and

(3) Met any performance criteria as determined by the program and communicated to the member.

(c) A certification by the organization responsible for the supervision of an individual that the individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

[75 FR 51411, Aug. 20, 2010]

§ 2526.20 Is an AmeriCorps participant who does not complete an originally-approved term of service eligible to receive a pro-rated education award?

(a) *Compelling personal circumstances.* A participant in an approved AmeriCorps position who is released prior to completing an approved term of service for compelling personal circumstances in accordance with § 2522.230(a) is eligible for a pro-rated education award if the participant—

(1) Performed satisfactorily prior to being granted a release for compelling personal circumstances; and

(2) Completed at least 15 percent of the originally-approved term of service.

(b) *Release for cause.* A participant who is released prior to completing an originally-approved term of service for cause is not eligible for any portion of an education award.

[64 FR 37415, July 12, 1999, as amended at 75 FR 51411, Aug. 20, 2010]

§ 2526.25 Is a participant in an approved Summer of Service position or approved Silver Scholar position who does not complete an approved term of service eligible to receive a pro-rated education award?

No. An individual released for any reason prior to completing an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

[75 FR 51411, Aug. 20, 2010]

§ 2526.30 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?

(a) Except as provided in paragraph (b) of this section, a recipient of an education award who is convicted under pertinent Federal or State law of the possession or sale of a controlled substance is not eligible to use his or her education award from the date of the conviction until the end of a specified time period, which is determined based on the type of conviction as follows:

(1) For conviction of the possession of a controlled substance, the ineligibility periods are—

(i) One year for a first conviction;

(ii) Two years for a second conviction; and

(iii) For a third or subsequent conviction, indefinitely, as determined by the Corporation according to the following factors—

(A) Type of controlled substance;

(B) Amount of controlled substance;

(C) Whether firearms or other dangerous weapons were involved in the offense;

(D) Nature and extent of any other criminal record;

(E) Nature and extent of any involvement in trafficking of controlled substances;

(F) Length of time between offenses;

(G) Employment history;

(H) Service to the community;

(I) Recommendations from community members and local officials, including experts in substance abuse and treatment; and

(J) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the ineligibility periods are—

(i) Two years for a first conviction; and

(ii) Two years plus such additional time as the Corporation determines as appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii) (A) through (J) of this section.

(b) (1) If the Corporation determines that an individual who has had his or her eligibility to use the education award suspended pursuant to paragraph (a) of this section has successfully completed a legitimate drug rehabilitation program, or in the case of a first conviction that the individual has enrolled in a legitimate drug rehabilitation program, the individual's eligibility to use the education award will be restored.

(2) In order for the Corporation to determine that the requirements of paragraph (b)(1) of this section have been met—

(i) The drug rehabilitation program must be recognized as legitimate by appropriate Federal, State or local authorities; and

(ii) The individual's enrollment in or successful completion of the legitimate drug rehabilitation program must be certified by an appropriate official of that program.

[59 FR 30711, June 15, 1994. Redesignated at 64 FR 37415, July 12, 1999]

§ 2526.40 What is the time period during which an individual may use an education award?

(a) *General requirement.* Unless the Corporation approves an extension in

accordance with the requirements of paragraph (b) of this section—

(1) An individual may use an AmeriCorps education award or a Silver Scholar education award within seven years of the date on which the individual successfully completed a term of service in an approved AmeriCorps or Silver Scholar position;

(2) An individual may use a Summer of Service education award within ten years of the date on which the individual successfully completed a term of service in an approved Summer of Service position;

(3) A designated individual who receives a transferred education award in accordance with § 2530.10 may use the transferred education award within ten years of the date on which the individual who transferred the award successfully completed the term of service in an approved AmeriCorps or Silver Scholar position that is the basis of the award.

(b) *Extensions.* In order to receive an extension of the period of availability specified in paragraph (a) of this section for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation may grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps, Summer of Service, or Silver Scholar position during the original period of availability, the Corporation may grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the original period of availability, the Corporation may grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph. In the case of a transferred award, an individual who is unable to use an education award as a result of being too young to enroll in an institution of higher education or other training establishment is not considered to be unavoidably prevented from using the education award.

[75 FR 51411, Aug. 20, 2010]

§ 2526.50 Is there a limit on the total amount of education awards an individual may receive?

(a) *General Limitation.* No individual may receive more than an amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of the value of an education award.* For the purposes of this section, the *value* of an education award is equal to the actual amount of the education award received divided by the amount of a full-time education award in the year the AmeriCorps or Silver Scholar position to which the award is attributed was approved. Each award received will be considered to have a value between 0 and 1. Although the *amount* of a full-time award as defined in § 2527.10(a) may change, the *value* of a full-time award will always be equal to 1.

(c) *Calculation of aggregate value of awards received.* The aggregate value of awards received is equal to the sum of:

(1) The value of each education award received as a result of successful completion of an approved AmeriCorps position;

(2) The value of each partial education award received as a result of release from an approved AmeriCorps position for compelling personal circumstances;

(3) The value of each education award received as a result of successful completion of a term of service in an approved Silver Scholar position; and

(4) The value of any amount received as a transferred education award, except as provided in § 2530.60(c).

(d) *Determination of Receipt of Award.* For purposes of determining the aggregate value of education awards, an award is considered to be received at

the time it becomes available for an individual's use.

[75 FR 51411, Aug. 20, 2010]

§ 2526.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in subsequent terms of service?

The aggregate value of education awards an individual has received will not impact an individual's ability to serve in a subsequent term of service, but will impact the amount of the education award the individual may receive upon successful completion of that term of service. If the award amount offered for the term of service has a value that, when added to the aggregate value of awards previously received, would exceed 2, upon successful completion of the term of service, the individual will only receive that portion of the award having a value for which the individual is eligible pursuant to § 2527.10(g).

[75 FR 51412, Aug. 20, 2010]

§ 2526.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same service?

An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans, except an individual may credit the service toward the Public Service Loan Forgiveness Program, as provided under 34 CFR § 685.219.

[75 FR 51412, Aug. 20, 2010]

§ 2526.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If the Corporation determines that the certification made by a national service program under § 2526.10(a)(2)(i), (2)(iii), or (2)(iv) is erroneous, the Corporation shall assess against the national service program a charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances surrounding the erroneous or incorrect certification.

(b) Nothing in this section shall prohibit the Corporation from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

[75 FR 51412, Aug. 20, 2010]

PART 2527—DETERMINING THE AMOUNT OF AN EDUCATION AWARD

AUTHORITY: 42 U.S.C. 12601–12606.

SOURCE: 64 FR 37415, July 12, 1999, unless otherwise noted.

§ 2527.10 What is the amount of an education award?

(a) *Full-time term of service.* Except as provided in paragraph (g) of this section, the education award for a full-time term of service in an approved AmeriCorps position of at least 1,700 hours will be equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the award year in which the term of service is approved by the Corporation.

(b) *Part-time term of service.* Except as provided in paragraph (g), the education award for a part-time term of service in an approved AmeriCorps position of at least 900 hours is equal to one half of the amount of an education award amount for a full-time term of service described in paragraph (a) of this section.

(c) *Reduced part-time term of service.* Except as provided in paragraph (g), the education award for a reduced part-time term of service in an approved AmeriCorps position of fewer than 900 hours is:

(1) An amount equal to the product of:

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) The amount of the education award for a part-time term of service described in paragraph (b) of this section; or

(2) An amount as determined otherwise by the Corporation.

(d) *Release for compelling personal circumstances.* The education award for an individual who is released from completing an originally-approved term of service for compelling personal circumstances is equal to the product of—

(1) The number of hours completed divided by the number of hours in the originally-approved term of service; and

(2) The amount of the education award for the originally-approved term of service.

(e) *Summer of Service Education Award.* (1) *In general.* The education award for a term of service in an approved Summer of Service position for at least 100 hours is $500.

(2) *Exception.* The Corporation may authorize a Summer of Service education award of $750 if the participant is economically disadvantaged, as verified by the organization or school operating the Summer of Service program.

(f) *Silver Scholar Education Award.* Except as provided in paragraph (g) of this section, the education award for a term of service in an approved Silver Scholar position for at least 350 hours is $1,000.

(g) *Calculating discounted education award amount.* To ensure that an individual receives no more than the aggregate value of two awards, as determined pursuant to § 2526.50, the discounted amount an individual is eligible to receive is determined by the following formula:

(2 − aggregate value of awards the individual has received) × (amount of a full-time education award in the year the position is approved)

[64 FR 37415, July 12, 1999, as amended at 75 FR 51412, Aug. 20, 2010]

PART 2528—USING AN EDUCATION AWARD

Sec.

2528.10 For what purposes may an education award be used?
2528.20 What steps are necessary to use an education award to repay a qualified student loan?
2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?
2528.60 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill approved program?
2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill approved program?
2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?

AUTHORITY: 42 U.S.C. 12601–12606.

SOURCE: 64 FR 37415, July 12, 1999, unless otherwise noted.

§ 2528.10 For what purposes may an education award be used?

(a) *Authorized uses.* An education award may be used—

(1) To repay qualified student loans in accordance with § 2528.20;

(2) To pay all or part of the current educational expenses at an institution of higher education in accordance with §§ 2528.30 through 2528.50;

(3) To pay expenses incurred in enrolling in a G.I. Bill approved program, in accordance with §§ 2528.60–80.

(b) *Multiple uses.* An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002; 75 FR 51412, Aug. 20, 2010]

§ 2528.20 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Identifying and other information from the holder of the loan as requested by the Corporation and necessary to ensure compliance with this part.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the holder of the loan and notify the individual of the payment.

(c) *Aggregate payments.* The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing an amount from an education award to pay all or part of the current educational expenses at an institution of higher education, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by the Corporation, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to the Corporation of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to the Corporation of the unused portion of the education award;

(iv) Individuals using education awards to pay for the current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The amount requested will be used to pay all or part of the individual's cost of attendance or other educational expenses attributable to a course offered by the institution;

(vi) The amount requested does not exceed the difference between:

(A) The individual's cost of attendance and other educational expenses; and

(B) The individual's estimated student financial assistance for that period under part A of title IV of the Higher Education Act (20 U.S.C. 1070 *et seq.*).

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution and notify the individual of the payment.

(c) *Installment payments.* The Corporation will disburse the education award to the institution of higher education in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002; 75 FR 51413, Aug. 20, 2010]

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance and other educational expenses, determined by the institution of higher education in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1987ll); and

(b) The individual's estimated financial assistance for that period under

part A of title IV of the Higher Education Act.

[64 FR 37415, July 12, 1999, as amended at 75 FR 51413, Aug. 20, 2010]

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which the Corporation has disbursed all or part of that individual's education award?

(a)(1) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, an institution of higher education that receives a disbursement of education award funds from the Corporation must provide a refund to the Corporation in an amount determined under that institution's published refund requirements.

(2) If an institution for higher education does not have a published refund policy, the institution must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

[64 FR 37415, July 12, 1999, as amended at 67 FR 45361, July 9, 2002]

§ 2528.60 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill approved program?

To use the education award to pay expenses for this purpose, you must have received an education award for successfully completing a term in an approved AmeriCorps position, approved Summer of Service position, or approved Silver Scholar position, in which you enrolled on or after October 1, 2009.

[75 FR 51413, Aug. 20, 2010]

§ 2528.70 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill approved program?

(a) *Required Information.* Before disbursing an amount from an education award for this purpose, the Corporation must receive—

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that the individual meets the criteria in § 2528.60; and

(3) Information from the educational institution or training establishment as requested by the Corporation, including verification that—

(i) The amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training offered by the institution or establishment;

(ii) The course(s) or program(s) for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs; and

(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution or establishment will ensure a pro-rata refund to the Corporation of the unused portion of the education award.

(b) *Payment.* When the Corporation receives the information required under paragraph (a) of this section, the Corporation will pay the institution or establishment and notify the individual of the payment.

[75 FR 51413, Aug. 20, 2010]

§ 2528.80 What happens if an individual for whom the Corporation has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?

(a) If an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, the approved educational institution or training establishment that receives a disbursement of education award funds from the Corporation must provide a pro-rata refund to the Corporation of the unused portion of the education award.

(b) The Corporation will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

[75 FR 51413, Aug. 20, 2010]

PART 2529—PAYMENT OF ACCRUED INTEREST

Sec.

2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?

2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which the individual has obtained forbearance?

AUTHORITY: 42 U.S.C. 12601–12606.

SOURCE: 64 FR 37417, July 12, 1999, unless otherwise noted.

§ 2529.10 Under what circumstances will the Corporation pay interest that accrues on qualified student loans during an individual's term of service in an approved AmeriCorps position or approved Silver Scholar position?

(a) *Eligibility*. The Corporation will pay interest that accrues on an individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if—

(1) The individual successfully completes a term of service in an approved AmeriCorps position or approved Silver Scholar position; and

(2) The holder of the loan approves the individual's request for forbearance during the term of service.

(b) *Amount*. The percentage of accrued interest that the Corporation will pay is the lesser of—

(1) The product of—

(i) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and (2) 100.

(c) *Supplemental to education award*. A payment of accrued interest under this part is supplemental to an education award received by an individual under parts 2526 through 2528 of this chapter.

(d) *Limitation*. The Corporation is not responsible for the repayment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service*. The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan during a period of suspended service.

[64 FR 37417, July 12, 1999, as amended at 75 FR 51413, Aug. 20, 2010]

§ 2529.20 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) An individual seeking forbearance must submit a request to the holder of the loan.

(b) If, before approving a request for forbearance, the holder of the loan requires verification that the individual is serving in an approved AmeriCorps position, the Corporation will provide verification upon a request from the individual or the holder of the loan.

§ 2529.30 What steps are necessary for using funds in the National Service Trust to pay interest that has accrued on a qualified student loan during a term of service for which an individual has obtained forbearance?

(a) The Corporation will make payments from the National Service Trust for interest that has accrued on a qualified student loan during a term of service which the individual has successfully completed and for which an individual has obtained forbearance, after the following:

(1) The program verifies that the individual has successfully completed the term of service and the dates upon which the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When the Corporation receives all necessary information from the program and the holder of the loan, the Corporation will pay the holder of the loan and notify the individual of the payment.

PART 2530—TRANSFER OF EDUCATION AWARDS

Sec.

2530.10 Under what circumstances may an individual transfer an education award?
2530.20 For what purposes may a transferred award be used?
2530.30 What steps are necessary to transfer an education award?
2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?
2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?
2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?
2530.70 Is a designated individual required to accept a transferred education award?
2530.80 Under what circumstances is a transfer revocable?
2530.85 What steps are necessary to revoke a transfer?
2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

AUTHORITY: 42 U.S.C. 12601–12606.

SOURCE: 75 FR 51413, Aug. 20, 2010, unless otherwise noted.

§ 2530.10 Under what circumstances may an individual transfer an education award?

An individual may transfer an education award if—

(a) The individual enrolled in an approved AmeriCorps State and National position or approved Silver Scholar position on or after October 1, 2009;

(b) The individual was age 55 or older on the day the individual commenced the term of service in an approved AmeriCorps State and National position or in approved Silver Scholar position;

(c) The individual successfully completed a term of service in an approved AmeriCorps State and National position or an approved Silver Scholar position;

(d) The award the individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2526.40(a);

(e) The individual designated to receive the transferred award is the transferring individual's child, grandchild, or foster child; and

(f) The individual designated to receive the transferred award is a citizen, national, or lawful permanent resident alien of the United States.

§ 2530.20 For what purposes may a transferred award be used?

A transferred award may be used by a designated individual to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2528.10.

§ 2530.30 What steps are necessary to transfer an education award?

(a) *Request for Transfer*. Before transferring an award to a designated individual, the Corporation must receive a request from the transferring individual, including—

(1) The individual's written authorization to transfer the award, the year in which the award was earned, and the specific amount of the award to be transferred;

(2) Identifying information for the individual designated to receive the transferred award;

(3) A certification that the transferring individual meets the requirements of paragraphs (a) through (c) of § 2530.10; and

(4) A certification that the designated individual is the child, grandchild, or foster child of the transferring individual.

(b) *Notification to Designated Individual*. Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will contact the designated individual to notify the individual of the proposed transfer, confirm the individual's identity, and give the individual the opportunity to accept or reject the transferred award.

(c) *Acceptance by Designated Individual*. To accept an award, a designated individual must certify that the designated individual is the child,

grandchild, or foster child of the transferring individual and that the designated individual is a citizen, national, or lawful permanent resident alien of the United States. Upon receipt of the designated individual's acceptance, the Corporation will create or permit the creation of an account in the National Service Trust for the designated individual, if an account does not already exist, and the accepted amount will be deducted from the transferring individual's account and credited to the designated individual's account.

(d) *Timing of transfer.* The Corporation must receive the request from the transferring individual prior to the date the award expires.

§ 2530.40 Is there a limit on the number of individuals one may designate to receive a transferred award?

(a) *General Limitation.* For each award an individual earns as a result of successfully completing a single term of service, an individual may transfer all or part of the award to a single designated individual. An individual may not transfer a single award attributable to successful completion of a single term of service to more than one designated individual.

(b) *Re-transfer.* If a designated individual rejects a transferred award in full, or the Corporation otherwise determines that a transfer was revoked for good cause in accordance with § 2530.80(c), the transferring individual may designate another individual to receive the transferred award.

§ 2530.50 Is there a limit on the amount of transferred awards a designated individual may receive?

Consistent with § 2526.50, no individual may receive more than an amount equal to the value of two full-time education awards. If the sum of the value of the requested transfer plus the aggregate value of education awards a designated individual has previously received would exceed the aggregate value of two full-time education awards, as determined pursuant to § 2526.50(b), the designated individual will be deemed to have rejected that portion of the award that would result in the excess. If a designated individual has already received the aggregate value of two full-time education awards, the individual may not receive a transferred education award, and the designated individual will be deemed to have rejected the award in full.

§ 2530.60 What is the impact of transferring or receiving a transferred education award on an individual's eligibility to receive additional education awards?

(a) *Impact on Transferring Individual.* Pursuant to § 2526.50, an award is considered to be received at the time it becomes available for an individual's use. Transferring all or part of an award does not reduce the aggregate value of education awards the transferring individual is considered to have received.

(b) *Impact on Designated Individual.* For the purposes of determining the value of the transferred education award under § 2526.50, a designated individual will be considered to have received a value equal to the amount accepted divided by the amount of a full-time award in the year the transferring individual's position was approved.

(c) *Result of revocation on award value.* If the transferring individual revokes, in whole or in part, a transfer, the value of the education award considered to have been received by the designated individual for purposes of § 2526.50 will be reduced accordingly.

§ 2530.70 Is a designated individual required to accept a transferred education award?

(a) *General Rule.* A designated individual is not required to accept a transferred education award, and may reject an award in whole or in part.

(b) *Result of rejection in full.* If the designated individual rejects a transferred award in whole, the amount is credited to the transferring individual's account in the National Service Trust, and may be transferred to another individual, or may be used by the transferring individual for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Result of rejection in part.* If the designated individual rejects a transferred award in part, the rejected portion is credited to the transferring individual's account in the National

Service Trust, and may be used by the transferring individual's for any of the purposes listed in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a). An individual may not re-transfer the rejected portion of the award to another individual.

§ 2530.80 Under what circumstances is a transfer revocable?

(a) *Revocation.* An individual may revoke a transfer at any time and for any reason prior to the award's use by the designated individual.

(b) *Use of Award.* Upon revocation, the amount revoked will be deducted from the designated individual's account and credited to the transferring individual's account. The transferring individual may use the revoked transferred education award for any of the purposes described in § 2528.10, consistent with the original time period of availability set forth in § 2526.40(a).

(c) *Re-transfer.* Generally, an individual may not re-transfer an award to another individual after revoking the same award from the original designated individual. The Corporation may approve re-transfer of an award for good cause, including cases in which the original designated individual was unavoidably prevented from using the award, as demonstrated by the individual transferring the award.

§ 2530.85 What steps are necessary to revoke a transfer?

(a) *Request for revocation.* Before revoking a transfer, the transferring individual must submit a request to the Corporation that includes —

(1) The individual's written authorization to revoke the award;

(2) The year in which the award was earned;

(3) The specific amount to be revoked; and

(4) The identity of the designated individual.

(b) *Credit to transferring individual.* Upon receipt of a request including all required information listed in paragraph (a) of this section, the Corporation will deduct the amount specified in the transferring individual's request from the designated individual's account and credit the amount to the account of the transferring individual, except as provided in paragraph (c) of this section. The Corporation will notify the transferring individual of the amount revoked.

(c) *Used awards.* A revocation may only apply to that portion of the transferred award that has not been used by the designated individual. If the designated individual has used the entire transferred amount prior to the date the Corporation receives the revocation request, no amount will be returned to the transferring individual. An amount is considered to be used when it is disbursed from the National Service Trust, not when a request is received to use an award.

(d) *Notification to designated individual.* The Corporation will notify the designated individual of the amount being revoked as of the date of the Corporation's receipt of the revocation request.

(e) *Timing of revocation.* The Corporation must receive the request to revoke the transfer from the transferring individual prior to the award's expiration ten years from the date the award was originally earned.

§ 2530.90 Is a designated individual eligible for the payment of accrued interest under Part 2529?

No, an individual must have successfully completed a term of service in an approved AmeriCorps position or Silver Scholar position to be eligible for the payment of accrued interest under Part 2529.

PART 2531—PURPOSES AND AVAILABILITY OF GRANTS FOR INVESTMENT FOR QUALITY AND INNOVATION ACTIVITIES

Sec.

2531.10 What are the purposes of the Investment for Quality and Innovation activities?

2531.20 Funding priorities.

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

§ 2531.10 What are the purposes of the Investment for Quality and Innovation activities?

Investment for Quality and Innovation activities are designed to develop service infrastructure and improve the

overall quality of national and community service efforts. Specifically, the Corporation will support innovative and model programs that otherwise may not be eligible for funding; and support other activities, such as training and technical assistance, summer programs, leadership training, research, promotion and recruitment, and special fellowships and awards. The Corporation may conduct these activities either directly or through grants to or contracts with qualified organizations.

[59 FR 13806, Mar. 23, 1994. Redesignated at 75 FR 51413, Aug. 20, 2010.]

§ 2531.20 Funding priorities.

The Corporation may choose to set priorities (and to periodically revise such priorities) that limit the types of innovative and model programs and support activities it will undertake or fund in a given fiscal year. In setting these priorities, the Corporation will seek to concentrate funds on those activities that will be most effective and efficient in fulfilling the purposes of this part.

[59 FR 13806, Mar. 23, 1994]

PART 2532—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS

Sec.

2532.10 Military Installation Conversion Demonstration programs.
2532.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.
2532.30 Other innovative and model programs.

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

SOURCE: 59 FR 13806, Mar. 23, 1994, unless otherwise noted. Redesignated at 75 FR 51413, Aug. 20, 2010

§ 2532.10 Military Installation Conversion Demonstration programs.

(a) *Purposes.* The purposes of this section are to: (1) Provide direct and demonstrable service opportunities for economically disadvantaged youth;

(2) Fully utilize military installations affected by closures or realignments;

(3) Encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) Foster a sense of community pride in the youth in the community.

(b) *Definitions.* As used in this section: (1) *Affected military installation.* The term *affected military installation* means a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1)).

(2) *Community.* The term *community* includes a county.

(3) *Convert to community use.* The term *convert to community use,* used with respect to an affected military installation, includes—

(i) Conversion of the installation or a part of the installation to—

(A) A park;

(B) A community center;

(C) A recreational facility; or

(D) A facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 *et seq.*); and

(ii) Carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(A) The community in which the installation is located; or

(B) A community located within 50 miles of the installation or such further distance as the Chief Executive Officer may deem appropriate on a case-by-case basis.

(4) *Demonstration program.* The term *demonstration program* means a program described in paragraph (c) of this section.

(c) *Demonstration programs*—(1) *Grants*—The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(i) Within the community; or

(ii) Within 50 miles of the community.

(2) *Duration.* In carrying out such a demonstration program, the community or community-based agency may carry out—

(i) A program of not less than 6 months in duration; or

(ii) A full-time summer program.

(d) *Use of Funds*—(1) *Stipend.* A community or community-based agency that receives a grant under paragraph (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) *Limitation on amount of stipend.* The amount of the stipend provided to a participant under paragraph (d)(1) of this section that may be paid using assistance provided under this section and using any other Federal funds may not exceed the lesser of—

(i) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955); and

(ii) 85 percent of the stipend established by the demonstration program involved.

(e) *Participants*—(1) *Eligibility.* A person will be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

(i) Economically disadvantaged and between the ages of 16 and 24, inclusive;

(ii) In the case of a full-time summer program, economically disadvantaged and between the ages of 14 and 24; or

(iii) An eligible youth as described in section 423 of the Job Training Partnership Act (29 U.S.C. 1693).

(2) *Participation.* Persons desiring to participate in such a project must enter into an agreement with the sponsor of the project to participate—

(i) On a full-time or a part-time basis; and

(ii) For the duration referred to in paragraph (f)(2)(iii) of this section.

(f) *Application*—(1) *In general.* To be eligible to receive a grant under paragraph (c) of this section, a community or community-based agency must submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) *Contents.* At a minimum, such application must contain—

(i) A description of the demonstration program proposed to be conducted by the applicant;

(ii) A proposal for carrying out the program that describes the manner in which the applicant will—

(A) Provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(B) Conduct an appropriate evaluation of the program; and

(C) Provide for appropriate community involvement in the program;

(iii) Information indicating the duration of the program; and

(iv) An assurance that the applicant will comply with the nonduplication, nondisplacement and grievance procedure provisions of part 2540 of this chapter.

(g) *Limitation on Grant.* In making a grant under paragraph (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation will not make a grant for more than 25 percent of the total cost of the conversion.

§ 2532.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.

(a) *Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.* The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) *Application*—(1) *General requirements.* To be eligible to receive a grant or enter into a contract under paragraph (a) of this section with respect to a program, an organization must submit an application to the President at such time, in such manner, and containing such information as required.

(2) *Contents.* The application submitted by the organization must, at a minimum—

(i) Include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(ii) Take into consideration—

(A) The primarily noncash economy of the region; and

(B) The needs and desires of residents of the local communities in the region; and

(iii) Include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

§ 2532.30 Other innovative and model programs.

(a) The Corporation may support other innovative and model programs such as the following: (1) Programs, including programs for rural youth, described in parts 2515 through 2524 of this chapter;

(2) Employer-based retiree programs;

(3) Intergenerational programs;

(4) Programs involving individuals with disabilities providing service;

(5) Programs sponsored by Governors; and

(6) Summer programs carried out between May 1 and October 1 (which may also contain a year-round component).

(b) The Corporation will support innovative service-learning programs.

[59 FR 13806, Mar. 23, 1994, as amended at 69 FR 6181, Feb. 10, 2004]

PART 2533—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

AUTHORITY: 42 U.S.C. 12657.

§ 2533.10 Eligible activities.

The Corporation may support—either directly or through a grant, contract or agreement—any activity designed to meet the purposes described in part 2531 of this chapter. These activities include, but are not limited to, the following: (a) *Community-based agencies.* The Corporation may provide training and technical assistance and other assistance to project sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(b) *Improve ability to apply for assistance.* The Corporation will provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(c) *Conferences and materials.* The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(d) *Peace Corps and VISTA training.* The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The training will be provided as part of the course of study of the individual at an institution of higher education, involve service-learning, and cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(e) *Promotion and recruitment.* The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(f) *Training.* The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(g) *Research.* The Corporation may support research on national service, including service-learning.

(h) *Intergenerational support.* The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(i) *Planning coordination.* The Corporation may coordinate community-wide planning among programs and projects.

(j) *Youth leadership.* The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(k) *National program identity.* The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(l) *Service-learning.* The Corporation will support innovative programs and activities that promote service-learning.

(m) *National youth service day*—(1) *Designation.* April 19, 1994, and April 18, 1995 are each designated as ''National Youth Service Day''. The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) *Federal activities.* In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) *Activities.* The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(n) *Clearinghouses*—(1) *Authority.* The Corporation may establish clearinghouses, either directly or through a grant or contract. Any service-learning clearinghouse to be established pursuant to part 2518 of this chapter is eligible to apply for a grant under this section. In addition, public or private nonprofit organizations are eligible to apply for clearinghouse grants.

(2) *Function.* A Clearinghouse may perform the following activities: (i) Assist entities carrying out State or local community service programs with needs assessments and planning;

(ii) Conduct research and evaluations concerning community service;

(iii) Provide leadership development and training to State and local community service program administrators, supervisors, and participants; and provide training to persons who can provide such leadership development and training;

(iv) Facilitate communication among entities carrying out community service programs and participants;

(v) Provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this chapter;

(vi) Gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects;

(vii) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(viii) Make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this chapter; and

(ix) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

(o) *Assistance for Head Start.* The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 (29 U.S.C. 5011 *et seq.*)), for projects of the type described in section 211(a) of such Act (29 U.S.C. 5011) operating under memoranda of agreement with the ACTION Agency, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C. 9831 *et seq.*).

(p) *Other assistance.* The Corporation may support other activities that are

consistent with the purposes described in part 2531 of this chapter.

[59 FR 13807, Mar. 23, 1994. Redesignated and amended at 75 FR 51413 and 51415, Aug. 20, 2010]

PART 2534—SPECIAL ACTIVITIES

Sec.
2534.10 National service fellowships.
2534.20 Presidential awards for service.

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

§ 2534.10 National service fellowships.

The Corporation may award national service fellowships on a competitive basis.

[69 FR 6181, Feb. 10, 2004. Redesignated at 75 FR 54789, Sept. 9, 2010]

§ 2534.20 Presidential awards for service.

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding programs. Information about recipients of such awards will be widely disseminated. The President may provide such awards to any deserving individual or program, regardless of whether the individual is serving in a program authorized by this chapter or whether the program is itself authorized by this chapter. In no instance, however, may the award be a cash award.

[59 FR 13808, Mar. 23, 1994. Redesignated at 75 FR 54789, Sept. 9, 2010]

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

Sec.
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2540.110 Limitation on use of Corporation funds for administrative costs.

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2540.320 How are participant benefits treated?
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Subpart E—Restrictions on Use of National Service Insignia

2540.500 What definition applies to this subpart?
2540.510 What are the restrictions on using national service insignia?
2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?
2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?
2540.540 Who has authority to approve use of national service insignia?
2540.550 Is there an expiration date on approvals for use of national service insignia?
2540.560 How do I renew authority to use a national service insignia?

Subpart F—False or Misleading Statements

2540.600 What definitions apply to this subpart?
2540.610 What are the consequences of making a false or misleading statement?
2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?
2540.630 What information must I provide to contest a proposed action?
2540.640 When will the reviewing official make a decision on the proposed action?
2540.650 How may I contest a reviewing official's decision to uphold the proposed action?
2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?
2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?

AUTHORITY: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653, 12631–12637; 42 U.S.C. 5065.

SOURCE: 59 FR 13808, Mar. 23, 1994, unless otherwise noted.

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

§ 2540.100 What restrictions govern the use of Corporation assistance?

(a) *Supplantation.* Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

(b) *Religious use.* Corporation assistance may not be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(c) *Political activity.* Corporation assistance may not be used by program participants or staff to assist, promote, or deter union organizing; or finance, directly or indirectly, any activity designed to influence the outcome of a Federal, State or local election to public office.

(d) *Contracts or collective bargaining agreements.* Corporation assistance may not be used to impair existing contracts for services or collective bargaining agreements.

(e) *Nonduplication.* Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

(f) *Nondisplacement.* (1) An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.

(2) An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.

(3) A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.

(4) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(5) A participant in any program receiving assistance under this chapter

may not perform any services or duties, or engage in activities, that—

(i) Will supplant the hiring of employed workers; or

(ii) Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(6) A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any—

(i) Presently employed worker;

(ii) Employee who recently resigned or was discharged;

(iii) Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) Employee who is on strike or who is being locked out.

[59 FR 13808, Mar. 23, 1994, as amended at 70 FR 39607, July 8, 2005]

§ 2540.110 Limitation on use of Corporation funds for administrative costs.

(a)(1) Not more than five percent of the grant funds provided under 45 CFR 2516, 2517, 2519, and 2521 for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Costs attributable to administrative functions as well as program functions should be prorated between administrative costs and program costs.

[63 FR 18138, Apr. 14, 1998]

Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

§ 2540.200 What does "you" mean in this section?

As used in this section, ''you'' means a Corporation grantee or other entity subject to Corporation grant provisions. Unless the context otherwise requires, this includes, but is not limited to, recipients of federal financial assistance under grant programs defined in § 2510.20 of this chapter as well as projects under the Senior Companion Program, the Foster Grandparent Program, and RSVP.

[77 FR 60932, Oct. 5, 2012]

§ 2540.201 To whom must I apply the National Service Criminal History Check eligibility criteria?

You must apply the National Service Criminal History Check eligibility criteria to individuals serving in covered positions. A covered position is a position in which the individual receives an education award or a Corporation grant-funded living allowance, stipend, or salary.

[77 FR 60932, Oct. 5, 2012]

§ 2540.202 What eligibility criteria must I apply to a covered position in connection with the National Service Criminal History Check?

In addition to the eligibility criteria you establish, an individual shall be ineligible to serve in a covered position if the individual—

(a) Refuses to consent to a criminal history check described in § 2540.203 of this chapter;

(b) Makes a false statement in connection with a criminal history check described in § 2540.203 of this chapter;

(c) Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry; or

(d) Has been convicted of murder, as defined in 18 U.S.C. 1111.

[77 FR 60932, Oct. 5, 2012]

§ 2540.203 What search components of the National Service Criminal History Check must I satisfy to determine an individual's eligibility to serve in a covered position?

(a) *Search procedure for individuals in covered positions who do not have recurring access to vulnerable populations.* Unless the Corporation approves an alternative search procedure under § 2540.207 of this chapter, to determine an individual's eligibility to serve in a covered position, you must conduct and document a National Service Criminal History Check that consists of the following components:

(1) A nationwide name-based search of the Department of Justice (DOJ) National Sex Offender Public Web site (NSOPW), and

(2) Either:

(i) A name- or fingerprint-based search of the official state criminal history registry for the state in which the individual in a covered position will be primarily serving or working *and* for the state in which the individual resides at the time of application; or

(ii) Submission of fingerprints through a state central record repository for a fingerprint-based Federal Bureau of Investigation (FBI) national criminal history background check.

(b) Search procedure for *individuals in covered positions who have recurring access to vulnerable populations.* (1) This rule applies to individuals who:

(i) Begin working for, or who start service with, you on or after April 21, 2011;

(ii) Will be 18 years old or older at any time during their term of service; and

(iii) Serve in a covered position that will involve recurring access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities.

(2) Unless the Corporation approves an alternative search procedure or an exception under § 2540.207 of this chapter, to determine the eligibility of an individual described in paragraph (b)(1) of this section you must conduct and document a National Service Criminal History Check that consists of the following components:

(i) A nationwide name-based search of the Department of Justice (DOJ) National Sex Offender Public Web site (NSOPW);

(ii) A name- or fingerprint-based search of the official state criminal history registry for the state in which the individual in a covered position will be primarily serving or working *and* for the state in which the individual resides at the time of application; and

(iii) Submission of fingerprints through a state central record repository for a fingerprint-based FBI national criminal history background check.

[77 FR 60932, Oct. 5, 2012]

§ 2540.204 When must I conduct a National Service Criminal History Check on an individual in a covered position?

(a) *Timing of the National Service Criminal History Check Components.* (1) You must conduct and review the results of the nationwide NSOPW check required under § 2540.203 before an individual in a covered position begins work or starts service.

(2) You must initiate state registry or FBI criminal history checks required under § 2540.203 before an individual in a covered position begins work or starts service. You may permit an individual in a covered position to begin work or start service pending the

receipt of results from state registry or FBI criminal history checks as long as the individual is not permitted access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities, without being in the physical presence of an appropriate individual, as described in § 2540.205(g) of this chapter.

(b) *Consecutive terms.* If an individual serves consecutive terms of service in a covered position and does not have a break in service that exceeds 120 days, then no additional National Service Criminal History Check is required, as long as the original check is a compliant check for the covered position in which the individual will be serving or working following the break in service. If your program or project is designed with breaks in service over 120 days, but less than 180 days between consecutive terms, you may request approval for a break in service of up to 180 days before a new National Service Criminal History Check is required. Your request must describe the overall program design, explain why the longer period is reasonable, and demonstrate that you have established adequate risk management controls for the extended break in service.

[77 FR 60932, Oct. 5, 2012]

§ 2540.205 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?

You are responsible for following these procedures:

(a) Verify the individual's identity by examining the individual's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization from the individual for the State registry check, for the FBI criminal history check, and for the appropriate sharing of the results of the checks within the program. Prior written authorization from the individual is not required to conduct the nationwide NSOPW check;

(c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the individual's National Service Criminal History Check component results, if any;

(d) Ensure that screening practices comply with federal civil rights laws, including Titles VI and VII of the Civil Rights Act of 1964 (and the Corporation's implementing regulations under Title VI);

(e) Provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a result before action is taken to exclude the individual from the position;

(f) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant; and

(g) Ensure that an individual, for whom the results of a required state or FBI criminal history registry check are pending, is not permitted to have access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities without being in the physical presence of:

(1) Your authorized representative who has previously been cleared for such access;

(2) A family member or legal guardian of the vulnerable individual; or

(3) An individual authorized, because of his or her profession, to have recurring access to the vulnerable individual, such as an education or medical professional.

(h) Unless specifically approved by the Corporation, you may not charge an individual for the cost of any component of a National Service Criminal History Check.

[77 FR 60932, Oct. 5, 2012]

§ 2540.206 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?

You must:

(a) Document in writing that you verified the identity of the individual in a covered position by examining the individual's government-issued photo identification card, and that you conducted the required checks for the covered position; and

(b) Maintain the results, or a results summary issued by a State or Federal government body, of the NSOPW check and the other components of each National Service Criminal History Check,

unless precluded from doing so by State or Federal law or regulation. You must also document in writing that an authorized grantee representative considered the results of the National Service Criminal History Check in selecting the individual.

[77 FR 60933, Oct. 5, 2012]

§ 2540.207 When may I follow an alternative search procedure or be excepted from a requirement in conducting a National Service Criminal History Check for a covered position?

(a) *Alternative search procedure.* (1) If you submit a written request to the Corporation's Office of Grants Management, the Corporation will consider approving an alternative search procedure:

(i) If you demonstrate that you are prohibited or otherwise precluded under state law from complying with a Corporation requirement relating to the National Service Criminal History Check, or

(ii) If you can obtain substantially equivalent or better information through an alternative search procedure.

(2) The Office of Grants Management will review the alternative search procedure to ensure that it:

(i) Verifies the identity of the individual; and

(ii) Includes a search of an alternative criminal database that is sufficient to identify the existence or absence of criminal offenses.

(b) *Exceptions to Criminal History Check requirements for individuals with recurring access to vulnerable populations.* (1) *Exception that does not require prior Corporation approval—Episodic Access.* (i) For the purposes of this section, an individual's access to a vulnerable population is considered to be episodic in nature if the service is not a regular, scheduled, and anticipated component of the individual's position description.

(ii) You are not required to conduct the fingerprint-based FBI criminal history check on individuals in covered positions with recurring access to vulnerable populations, as described in § 2540.203 of this chapter, when the individual's access to a vulnerable population is episodic in nature or for a 1-day period.

(iii) No prior approval is required from the Corporation for you to apply this exception. You must make and document a determination that the individual's access to vulnerable populations is episodic, as defined by paragraphs (b)(1)(i) and (ii) of this section.

(2) *Exceptions that require prior approval of the Corporation.* You are not required to conduct the fingerprint-based FBI criminal history check on individuals in covered positions with recurring access to vulnerable populations, as described in § 2540.203 of this chapter, if you demonstrate and the Corporation determines in writing that:

(i) Complying with § 2540.203(b)(2)(iii) of this chapter is cost-prohibitive;

(ii) You are not authorized, or are otherwise unable, under state or federal law, to access the national criminal history background check system of the FBI; or

(iii) That you are exempt from the requirement in § 2540.203(b)(2)(iii) of this chapter for good cause.

[77 FR 60933, Oct. 5, 2012]

§ 2540.208 Under what circumstances may participants be engaged?

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

[59 FR 13808, Mar. 23, 1994. Redesignated at 72 FR 48582, Aug. 24, 2007]

§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

(a) An individual with responsibility for the operation of a project that receives Corporation assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or

member is a qualified individual with a disability.

(b) Any Corporation assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was employed with the organization operating the project on the date the Corporation grant was awarded.

(d) Grantees must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint with the Corporation's Office of Civil Rights and Inclusiveness.

[59 FR 13808, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

§ 2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?

A program participant, staff member, or beneficiary who believes that he or she has been subject to illegal discrimination should contact the Corporation's Office of Civil Rights and Inclusiveness, which offers an impartial discrimination complaint resolution process. Participation in a discrimination complaint resolution process is protected activity; a grantee is prohibited from retaliating against an individual for making a complaint or participating in any manner in an investigation, proceeding, or hearing.

[73 FR 53760, Sept. 17, 2008]

§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C 6381 *et seq.;* such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participant's serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment, the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation. A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The

neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration*—(1) *Arbitrator*—(i) *Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) *Appointment by Corporation.* If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators.

(2) *Time Limits*—(i) *Proceedings.* An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration, or, if the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

(ii) *Decision.* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

(3) *The cost.* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorney's fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* Remedies for a grievance filed under a procedure established by a recipient of Corporation assistance may include—

(1) Prohibition of a placement of a participant; and

(2) In grievance cases where there is a violation of nonduplication or nondisplacement requirements and the employer of the displaced employee is the recipient of Corporation assistance—

(i) Reinstatement of the employee to the position he or she held prior to the displacement;

(ii) Payment of lost wages and benefits;

(iii) Re-establishment of other relevant terms, conditions and privileges of employment; and

(iv) Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the

amount in controversy or the parties' citizenship.

Subpart C—Other Requirements for Recipients of Corporation Assistance

§ 2540.300 What must be included in annual State reports to the Corporation?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this chapter and the status of the national and community service programs in the State that receive assistance under this chapter. A State's annual report must include information that demonstrates the State's compliance with the requirements of this chapter.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this chapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

§ 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

§ 2540.330 Parental involvement required

(a) *Consultation Requirement.* Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

(b) *Parental Permission.* Programs that receive assistance under the national service laws must, before transporting minor children, provide the children's parents or legal guardians with the reason for the transportation and obtain the parent's or legal guardian's permission for such transportation, consistent with State law.

[74 FR 46507, Sept. 10, 2009]

Subpart D—Suspension and Termination of Corporation Assistance

§ 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

(a) *Suspension of a grant or contract.* In emergency situations, the Corporation may suspend a grant or contract for not more than calendar 30 days. Examples of such situations may include, but are not limited to: (1) Serious risk to persons or property;

(2) Violations of Federal, State or local criminal statutes; and

(3) Material violation(s) of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) *Termination of a grant or contract.* The Corporation may terminate or revoke assistance for failure to comply with applicable terms and conditions of this chapter. However, the Corporation must provide the recipient reasonable notice and opportunity for a full and fair hearing, subject to the following conditions: (1) The Corporation will notify a recipient of assistance by letter or telegram that the Corporation intends to terminate or revoke assistance, either in whole or in part, unless the recipient shows good cause why

such assistance should not be terminated or revoked. In this communication, the grounds and the effective date for the proposed termination or revocation will be described. The recipient will be given at least 7 calendar days to submit written material in opposition to the proposed action.

(2) The recipient may request a hearing on a proposed termination or revocation. Providing five days notice to the recipient, the Corporation may authorize the conduct of a hearing or other meetings at a location convenient to the recipient to consider the proposed suspension or termination. A transcript or recording must be made of a hearing conducted under this section and be available for inspection by any individual.

Subpart E—Restrictions on Use of National Service Insignia

SOURCE: 73 FR 53761, Sept. 17, 2008, unless otherwise noted.

§ 2540.500 What definition applies to this subpart?

National Service Insignia. For this subpart, *national service insignia* means the former and current seal, logos, names, or symbols of the Corporation's programs, products, or services, including those for AmeriCorps, VISTA, Learn and Serve America, Senior Corps, Foster Grandparents, the Senior Companion Program, the Retired and Senior Volunteer Program, the National Civilian Community Corps, and any other program or project that the Corporation administers.

§ 2540.510 What are the restrictions on using national service insignia?

The national service insignia are owned by the Corporation and only may be used as authorized. The national service insignia may not be used by non-federal entities for fundraising purposes or in a manner that suggests Corporation endorsement.

§ 2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?

Any person who uses the national service insignia without authorization may be subject to legal action for trademark infringement, enjoined from continued use, and, for certain types of unauthorized uses, other civil or criminal penalties may apply.

§ 2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?

All uses of the national service insignia require the written approval of the Corporation.

§ 2540.540 Who has authority to approve use of national service insignia?

Approval for limited uses may be provided through the terms of a written grant or other agreement. All other uses must be approved in writing by the director of the Corporation's Office of Public Affairs, or his or her designee.

§ 2540.550 Is there an expiration date on approvals for use of national service insignia?

The approval to use a national service insignia will expire as determined in writing by the director of the Office of Public Affairs, or his or her designee. However, the authority to use an insignia may be revoked at any time if the Corporation determines that the use involved is injurious to the image of the Corporation or if there is a failure to comply with the terms and conditions of the authorization.

§ 2540.560 How do I renew authority to use a national service insignia?

Requests for renewed authority to use an insignia must follow the procedures for initial approval as set out in § 2540.540.

Subpart F—False or Misleading Statements

SOURCE: 73 FR 53761, Sept. 17, 2008, unless otherwise noted.

§ 2540.600 What definitions apply to this subpart?

You. For this subpart, *you* refers to a participant in a national service program.

§ 2540.610 What are the consequences of making a false or misleading statement?

If it is determined that you made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, it may result in the revocation of the qualification or forfeiture of the benefit. Revocation and forfeiture under this part are in addition to any other remedy available to the Federal Government under the law against persons who make false or misleading statements in connection with a Federally-funded program.

§ 2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?

If the Corporation determines that you have made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, you will be hand delivered a written notice, or sent a written notice to your last known street address or e-mail address or that of your identified counsel at least 15 days before any proposed action is taken. The notice will include the facts surrounding the determination and the action the Corporation proposes to take. The notice will also identify the reviewing official in your case and provide other pertinent information. You will be allowed to show good cause as to why forfeiture, revocation, the denial of a benefit, or other action should not be implemented. You will be given 10 calendar days to submit written materials in opposition to the proposed action.

§ 2540.630 What information must I provide to contest a proposed action?

Your written response must include specific facts that contradict the statements made in the notice of proposed action. A general statement of denial is insufficient to raise a dispute over the facts material to the proposed action. Your response should also include copies of any documents that support your argument.

§ 2540.640 When will the reviewing official make a decision on the proposed action?

The reviewing official will issue a decision within 45 days of receipt of your response.

§ 2540.650 How may I contest a reviewing official's decision to uphold the proposed action?

If the Corporation's reviewing official concludes that the proposed action, in full or in part, should still be implemented, you will have an opportunity to request an additional proceeding. A Corporation program director or designee will conduct a review of the complete record, including such additional relevant documents you submit. If deemed appropriate, such as where there are material facts in genuine dispute, the program director or designee may conduct a telephonic or in person meeting. If a meeting is conducted, it will be recorded and you will be provided a copy of the recording. The program director or designee will issue a decision within 30 days of the conclusion of the review of the record or meeting. The decision of the program director or designee is final and cannot be appealed further within the agency.

§ 2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?

If it is determined that you received a financial benefit improperly, you may be required to reimburse the program for that benefit.

§ 2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?

If the reviewing official determines that, based on the information available, there is a reasonable likelihood that you will be determined disqualified or ineligible, your qualification or eligibility may be suspended, pending issuance of a final decision, to protect the public interest.

PARTS 2541–2543 [RESERVED]

PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS

Sec.
2544.100 What is the purpose of this part?
2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?
2544.110 What definitions apply to terms used in this part?
2544.115 Who may offer a donation?
2544.120 What personal services from a volunteer may be solicited and accepted?
2544.125 Who has the authority to solicit and accept or reject a donation?
2544.130 How will the Corporation determine whether to solicit or accept a donation?
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2544.140 How will the Corporation accept or reject an offer?
2544.145 What will be done with property that is not accepted?
2544.150 How will accepted donations be recorded and used?

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

SOURCE: 60 FR 28355, May 31, 1995, unless otherwise noted.

§ 2544.100 What is the purpose of this part?

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

§ 2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

§ 2544.110 What definitions apply to terms used in this part?

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

§ 2544.115 Who may offer a donation?

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

§ 2544.120 What personal services from a volunteer may be solicited and accepted?

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

§ 2544.125 Who has the authority to solicit and accept or reject a donation?

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?

(a) The Corporation will solicit and accept a donation only for the purpose of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d)(1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

§ 2544.135 How should an offer of a donation be made?

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

§ 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

§ 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations (41 CFR chapter 101) or given to local charities determined by the Corporation.

§ 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125.

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified, or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125.

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

Sec.

2550.10 What is the purpose of this part?
2550.20 Definitions.
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AUTHORITY: 42 U.S.C. 12638.

SOURCE: 58 FR 60981, Nov. 18, 1993, unless otherwise noted.

§ 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

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

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

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions,

and other relevant information for State commissions and AAEs.

[58 FR 60981, Nov. 18, 1993, as amended at 67 FR 45362, July 9, 2002; 70 FR 39607, July 8, 2005]

§ 2550.20 Definitions.

(a) *AAE.* Alternative Administrative Entity.

(b) *Administrative costs.* As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.

(c) *Alternative Administrative Entity (AAE).* A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position.* A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation.* As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative.* Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe.* (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 48 Stat. 984, chapter 576; 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult.* An individual 55 years of age or older.

(i) *Service-learning.* A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or participants to reflect on the service experience.

(j) *Service learning programs.* The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State.* As used in this part, the term State refers to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam,

American Samoa, and the Commonwealth of the Northern Mariana Islands.

(l) *State Commission*. A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

(m) *State Educational Agency*. The same meaning given to such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(n) *State entity*. A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

[58 FR 60981, Nov. 18, 1993, as amended at 67 FR 45362, July 9, 2002; 70 FR 39607, July 8, 2005]

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

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the Corporation, should seek to establish an AAE.

(c) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005]

§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to estalbish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of resubmission.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005]

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent none, one, or more than one category, but each of the following categories must be represented:

(1) A representative of a community-based agency or organization in the State;

(2) The head of the State education agency or his or her designee;

(3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth;

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism; and

(10) A representative of the volunteer sector.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 *et seq.*).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent practicable, the chief executive officer of a State shall ensure that the membership for the State commission is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent plus one of the voting members of a State commission may be from the same political party. In addition, the number of voting members of a State commission who are officers or employees of the State may not exceed 25% of the total membership of that State commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio non-voting member on the State Commission. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

[58 FR 60981, Nov. 18, 1993, as amended at 73 FR 53762, Sept. 17, 2008; 74 FR 46507, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009]

§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

§ 2550.70 [Reserved]

§ 2550.80 What are the duties of the State entities?

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively referred to as State entities. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year, comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service covering a three-year period, the beginning of which may be set by the State, that is consistent with the Corporation's broad goals of meeting human, educational, environmental, and public safety needs and meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for the maximum participation and input from a broad cross-section of individuals and organizations, including national service programs within the State, community-based agencies, organizations with a demonstrated record of providing educational, public safety, human, or environmental services, residents of the State, including youth and other prospective participants, State Educational Agencies, traditional service organizations, labor unions, and other interested members of the public.

(2) The plan must ensure outreach to diverse, broad-based community organizations that serve underrepresented populations by creating State networks and registries or by utilizing existing ones.

(3) The plan must set forth the State's goals, priorities, and strategies for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan.

(4) The plan may contain such other information as the State commission considers appropriate and must contain such other information as the Corporation may require.

(5) The plan must ensure outreach to, and coordination with, municipalities and county governments regarding the national service laws.

(6) The plan must provide for effective coordination of funding applications submitted by the State and other organizations within the State under the national service laws.

(7) The plan must include measurable goals and outcomes for national service programs funded through the State consistent with the performance levels for national service programs.

(8) The plan is subject to approval by the chief executive officer of the State.

(9) The plan must be submitted, in its entirety, in summary, or in part, to the Corporation upon request.

(b) *Selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Prepare an application to the Corporation to receive funding or education awards for national service programs operating in and selected by the State.

(2) Administer a competitive process to select national service programs for funding. The State is not required to select programs for funding prior to submission of the application described in paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

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

(k) *Make recommendations to the Corporation* with respect to priorities within the State for programs receiving assistance under DVSA.

(l) *Coordination*—(1) *Coordination with other State agencies.* A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) or other appropriate Federal financial assistance programs.

(2) *Coordination with volunteer service programs.* In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (l) (1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

(m) *Supplemental State Service Plan for Adults Age 55 or Older.* To be eligible to receive a grant or allotment under subtitles B or C of title I of the National and Community Service Act (42 U.S.C. 12501 *et seq.*), or to receive a distribution of approved national service positions under subtitle C of title I of that Act, a State must work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older. This plan must:

(1) Include the following elements:

(i) Recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(ii) Recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to nonprofit organizations, the State educational agency, institutions of higher education, and other State agencies;

(iii) Recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives;

(2) Incorporate the current knowledge base regarding—

(i) The economic impact of the roles of workers age 55 or older in the economy;

(ii) The social impact of the roles of such workers in the community;

(iii) The health and social benefits of active engagement for adults age 55 or older; and

(3) Be made available to the public and transmitted to the Corporation.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005; 73 FR 53762, Sept. 17, 2008; 74 FR 46507, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009; 75 FR 51415, Aug. 20, 2010]

§ 2550.85 How will the State Plan be assessed?

The Corporation will assess the quality of your State Plan as evidenced by:

(a) The development and quality of realistic goals and objectives for moving service ahead in the State;

(b) The extent to which proposed strategies can reasonably be expected to accomplish stated goals; and

(c) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations as required by § 2550.80(a)(1).

[73 FR 53762, Sept. 17, 2008]

§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers, directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances, participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

§ 2550.100 Do State entities or their members incur any risk of liability?

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

§ 2550.110 What grants will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Administrative Grants.* The Corporation may make administrative grants to States in an amount no less than $250,000 and up to $1 million for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Except as provided in paragraph (c) of this section, the amount of a grant that may

be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 50 percent of the total cost to establish or operate the State Commission or AAE.

(c) *Alternative Match Schedule.* The Corporation may permit a State that demonstrates hardship or a new State Commission to meet alternative matching requirements for such a grant as follows:

Grant amount	Match requirement
(1) First $100,000	No match requirement.
(2) Amounts above $100,000 but less than $250,000	$1 of non-Federal funds for every $2 provided by the Corporation in excess of $100,000.
(3) Amounts greater than $250,000	$1 of non-Federal funds for every $1 provided by the Corporation in excess of $250,000.

[74 FR 46508, Sept. 10, 2009]

PART 2551—SENIOR COMPANION PROGRAM

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AUTHORITY: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

SOURCE: 64 FR 14115, Mar. 24, 1999, unless otherwise noted.

Subpart A—General

§ 2551.11 What is the Senior Companion Program?

The Senior Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Senior Companions in providing supportive, individualized services to help older adults with special needs maintain their dignity and independence.

[74 FR 46508, Sept. 10, 2009]

§ 2551.12 Definitions.

(a) *Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

(b) *Adult with special needs.* Any individual over 21 years of age who has one or more physical, emotional, or mental health limitations and is in need of assistance to achieve and maintain their highest level of independent living.

(c) *Adequate staffing level.* The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted Volunteer Service Years (VSY), number of volunteer stations, and the size of the service area.

(d) *Annual income.* Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

(e) *Chief Executive Officer.* The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

(f) *Corporation.* The Corporation for National and Community Service established under the Trust Act. The Corporation is also sometimes referred to as CNCS.

(g) *Cost reimbursements.* Reimbursements provided to volunteers such as stipends to cover incidental costs, meals, and transportation, to enable them to serve without cost to themselves. Also included are the costs of annual physical examinations, volunteer insurance and recognition which are budgeted as Volunteer Expenses.

(h) *In-home.* The non-institutional assignment of a Senior Companion in a private residence.

(i) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor and the adult served or the persons legally responsible for that adult. It authorizes the assignment of a Senior Companion in the clients home, defines the Senior Companion's activities and delineates specific arrangements for supervision.

(j) *Memorandum of Understanding.* A written statement prepared and signed by the Senior Companion project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

(k) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), the Senior Companion Program (SCP), and Demonstration Programs established under Title II Parts A, B, C, and E, of the Act. NSSC is also referred to as the ''Senior Corps''.

(l) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions, required to be raised by the sponsor in support of the grant.

(m) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(n) *Project.* The locally planned and implemented Senior Companion Program activity or set of activities as agreed upon between a sponsor and the Corporation.

(o) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act, 29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(p) *Service area.* The geographically defined area in which Senior Companions are recruited, enrolled, and placed on assignments.

(q) *Service schedule.* A written delineation of the days and times a Senior Companion serves each week.

(r) Sponsor. A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of a Senior Companion project.

(s) *Stipend.* A payment to Senior Companions to enable them to serve without cost to themselves. The amount of the stipend is determined by the Corporation and is payable in regular installments. The minimum amount of the stipend is set by law and shall be adjusted by the CEO from time to time.

(t) *Trust Act.* The National and Community Service Trust Act of 1993, Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785.

(u) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(v) *Volunteer assignment plan.* A written description of a Senior Companion's assignment with a client. The plan identifies specific outcomes for the client served and the activities of the Senior Companion.

(w) Volunteer station. A public agency, secular or faith-based private nonprofit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of Senior Companions in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[64 FR 14115, Mar. 24, 1999, as amended at 69 FR 60094, Oct. 7, 2004]

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2551.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations,

both secular and faith-based, in the United States that have the authority to accept and the capability to administer a Senior Companion project.

[69 FR 60095, Oct. 7, 2004]

§ 2551.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Senior Companion Program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. The sponsor shall comply with all program regulations and policies, and grant provisions prescribed by the Corporation.

§ 2551.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus Senior Companion resources on critical problems affecting the frail elderly and other adults with special needs within the project's service area.

(b) Assess in collaboration with other community organizations or utilize existing assessment of the needs of the client population in the community and develop strategies to respond to those needs using the resources of Senior Companions.

(c) Develop and manage a system of volunteer stations by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Senior Companions;

(2) Ensuring that the placement of Senior Companions is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against volunteers or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop service opportunities that consider the skills and experiences of the Senior Companion.

(e) Consider the demographic makeup of the project service area in the enrollment of Senior Companions, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Senior Companions with assignments that show direct and demonstrable benefits to the adults and the community served, the Senior Companions, and the volunteer station; with required cost reimbursements specified in § 2551.46; with not less than 40 hours of orientation of which 20 hours must be pre-service, and an average of 4 hours of monthly in-service training.

(g) Encourage the most efficient and effective use of Senior Companions by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Develop, and annually update, a plan for promoting senior service within the project's service area.

(j) Annually assess the accomplishments and impact of the project on the identified needs and problems of the client population in the community.

(k) Establish written service policies for Senior Companions that include but are not limited to annual and sick leave, holidays, service schedules, termination, appeal procedures, meal and transportation reimbursements.

(l) Conduct criminal history checks on all Senior Companions and Senior Companion grant-funded employees who start service, or begin work, in your program after November 23, 2007,

in accordance with the National Service Criminal History Check requirements in 45 CFR 2540.200 through 2540.207.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 60095, Oct. 7, 2004; 74 FR 46508, Sept. 10, 2009; 77 FR 60933, Oct. 5, 2012]

§ 2551.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable of human and social needs of the community;

(2) Competent in the field of community service and volunteerism;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and impact programming;

(4) With interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2551.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope, and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with other similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and Senior Companion activities. This includes provision of appropriate insurance coverage for Senior Companions, vehicles and other properties used in the project.

(g) Establish record keeping/reporting systems in compliance with Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

§ 2551.26–2551.32 [Reserved]

§ 2551.33 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48583, Aug. 24, 2007]

Subpart C—Suspension and Termination of Corporation Assistance

§ 2551.34 What are the rules on suspension, termination, and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded and opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Senior Companion Program are specified in 45 CFR Part 1206.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48583, Aug. 24, 2007]

Subpart D—Senior Companion Eligibility, Status, and Cost Reimbursements

§ 2551.41 Who is eligible to be a Senior Companion?

(a) To be a Senior Companion, an individual must:

(1) Be 55 years of age or older;

(2) Be determined by a physical examination to be capable, with or without reasonable accommodation, of serving adults with special needs without detriment to either himself/herself or the adults served;

(3) Agree to abide by all requirements as set forth in this part; and

(4) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart D.

(b) Eligibility to be a Senior Companion shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap, or political affiliation.

[64 FR 14115, Mar. 24, 1999, as amended at 74 FR 46508, Sept. 10, 2009]

§ 2551.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Senior Companion or as a Senior Companion grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Senior Companion or as a Senior Companion grant-funded employee.

[74 FR 46508, Sept. 10, 2009]

§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?

(a) To receive a stipend, a Senior Companion may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent

of the poverty line, as set forth in 42 U.S.C. 9902 (2).

(b) For applicants to become stipended Senior Companions, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Senior Companions, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party payor, and which do not exceed 50 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 20830, Apr. 19, 2004; Redesignated at 72 FR 48584, Aug. 24, 2007; 74 FR 46508, Sept. 10, 2009]

§ 2551.44 What is considered income for determining volunteer eligibility?

(a) For determining eligibility, ''income'' refers to total cash or in-kind receipts before taxes from all sources including:

(1) Money, wages, and salaries before any deduction, but not including food or rent in lieu of wages;

(2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;

(3) Regular payments for public assistance, Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, child support, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, and regular insurance or annuity payments; and

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury;

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007]

§ 2551.45 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?

Senior Companions are volunteers, and are not employees of the sponsor, the volunteer station, the Corporation, or the Federal Government.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007]

§ 2551.46 What cost reimbursements are provided to Senior Companions?

Cost reimbursements include:

(a) *Stipend.* Senior Companions who are income eligible will receive a stipend in an amount determined by the Corporation and payable in regular installments, to enable them to serve without cost to themselves. The stipend is paid for the time Senior Companions spend with their assigned clients, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Senior Companion is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Senior Companions for personal injury during travel between their homes and places of assignment, during their volunteer service, during

meal periods while serving as a volunteer, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For Senior Companions who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) Senior Companions who drive their personal vehicles to or on assignments or project-related activities must maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

(c) *Transportation.* Senior Companions shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(d) *Physical examination.* Senior Companions are provided a physical examination prior to assignment and annually thereafter to ensure that they will be able to provide supportive service without injury to themselves or the clients served.

(e) *Meals and recognition.* Senior Companions shall be provided the following within limits of the project's available resources:

(1) Assistance with the cost of meals taken while on assignment; and

(2) Recognition for their service.

(f) Leadership incentive. Senior Companions who serve as volunteer leaders, assisting new Senior Companions or coordinating other Senior Companions in accordance with the Act, may be paid a monetary incentive.

(g) *Other volunteer expenses.* Senior Companions may be reimbursed for expenses incurred while performing their volunteer assignments provided these expenses are described in the Memorandum of Understanding negotiated with the volunteer station to which the volunteer is assigned, and there are sufficient funds available to cover these expenses and meet all other requirements identified in the notice of grant award.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 20830, Apr. 19, 2004. Redesignated at 72 FR 48584, Aug. 24, 2007]

§ 2551.47 May the cost reimbursements of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Senior Companion's cost reimbursements are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Senior Companion may be receiving under any governmental program.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007]

Subpart E—Senior Companion Terms of Service

§ 2551.51 What are the terms of service of a Senior Companion?

A Senior Companion shall serve a minimum of 15 hours per week and a maximum of 40 hours per week. A Senior Companion shall not serve more than 2088 hours per year. Within these limitations, a sponsor may set service policies consistent with local needs.

[67 FR 60998, Sept. 27, 2002]

§ 2551.52 What factors are considered in determining a Senior Companion's service schedule?

(a) Travel time between the Senior Companion's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended only if it is specified in the goal statement as part of the service activity.

§ 2551.53 Under what circumstances may a Senior Companion's service be terminated?

(a) A sponsor may remove a Senior Companion from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision. A Senior Companion may also be removed from service for having income in excess of the eligibility level.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2551.61 May a sponsor serve as a volunteer station?

Yes, a sponsor may serve as a volunteer station, provided this is part of the application workplan approved by the Corporation.

[67 FR 60999, Sept. 27, 2002]

§ 2551.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of Senior Companion volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§ 2551.71 through 2551.72, and regularly assess those assignments for continued appropriateness.

(b) Select eligible clients for assigned volunteers.

(c) Develop a written volunteer assignment plan for each client that identifies the role and activities of the Senior Companion and expected outcomes for the client served.

(d) Obtain a Letter of Agreement for Senior Companions assigned in-home. This letter must comply with all Federal, State and local regulations.

(e) Provide Senior Companions serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation; and

(3) Appropriate recognition.

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Senior Companions while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Senior Companions assigned to it.

(i) Comply with all applicable civil rights laws and regulations including reasonable accommodation for Senior Companions with disabilities.

(j) Undertake such other responsibilities as may be necessary to the successful performance of Senior Companions in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Senior Companion Placements and Assignments

§ 2551.71 What requirements govern the assignment of Senior Companions?

(a) Senior Companion assignments shall provide for Senior Companions to give direct services to one or more eligible adults that:

(1) Result in person-to-person supportive relationships with each client served.

(2) Support the achievement and maintenance of the highest level of independent living for their clients.

(3) Are meaningful to the Senior Companion.

(4) Are supported by appropriate orientation, training, and supervision.

(b) Senior Companions may serve as volunteer leaders, and in this capacity may provide indirect services. Senior

Companions with special skills or demonstrated leadership ability may assist newer Senior Companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(c) Senior Companions shall not provide services such as those performed by medical personnel, services to large numbers of clients, custodial services, administrative support services, or other services that would detract from their assignment.

[67 FR 60999, Sept. 27, 2002]

§ 2551.72 Is a written volunteer assignment plan required for each volunteer?

(a) All Senior Companions performing direct services to individual clients in home settings and individual clients in community-based settings, shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the client(s) to be served;

(3) Identifies the role and activities of the Senior Companion and expected outcomes for the client(s);

(4) Addresses the period of time each client is expected to receive such services; and

(5) Is used to review the status of the Senior Companion's services in working with the assigned client(s), as well as the impact of the assignment on the client(s).

(b) If there is an existing plan that incorporates paragraphs (a)(2), (3), and (4) of this section, that plan shall meet the requirement.

(c) All Senior Companions serving as volunteer leaders shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the role and activities of the Senior Companion and expected outcomes;

(3) Addresses the period of time of service; and

(4) Is used to review the status of the Senior Companion's services identified in the assignment plan, as well as the impact of those services.

[67 FR 60999, Sept. 27, 2002]

Subpart H—Clients Served

§ 2551.81 What type of clients are eligible to be served?

Senior Companions serve only adults, primarily older adults, who have one or more physical, emotional, or mental health limitations and are in need of assistance to achieve and maintain their highest level of independent living.

Subpart I—Application and Fiscal Requirements

§ 2551.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application for a grant at any time.

(2) Before submitting an application an applicant shall determine the availability of funds from the Corporation.

(3) The Corporation may also solicit grant applicants. Applicants solicited under this provision are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(b) *What must an eligible organization include in a grant application?* (1) An applicant shall complete standard forms prescribed by the Corporation.

(2) The applicant shall comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(c) *Who reviews the merits of an application and how is a grant awarded?* (1) The Corporation reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. When funds are available, the Corporation awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide financial support to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, with an explanation of the Corporation's decision.

(e) *For what period of time does the Corporation award a Senior Companion grant?* The Corporation awards a Senior Companion grant for a specified period that is usually 12 months in duration.

§ 2551.92 What are project funding requirements?

(a) *Is non-Corporation support required?* A Corporation grant may be awarded to fund up to 90 percent of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does the Corporation allow less than the 10 percent non-Corporation support?* The Corporation may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-Corporation support required?* Whenever locally generated contributions to Senior Companion projects are in excess of the minimum 10 percent non-Corporation support required, the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* 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 audit by the Corporation, its Inspector General, or their authorized agents.

(e) *How are Senior Companion cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Senior Companions, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

(i) Initial difficulties in the development of local funding sources during the first three years of operations;

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(f) *May a sponsor pay stipends at a rate different than the rate established by the Corporation?* A sponsor shall pay stipends at the same rate as that established by the Corporation.

[64 FR 14115, Mar. 24, 1999, as amended at 75 FR 51415, Aug. 20, 2010]

§ 2551.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

[79 FR 76077, Dec. 19, 2014]

Subpart J—Non-Stipended Senior Companions

§ 2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions without stipends?

Over-income persons, age 55 or over, may be enrolled in SCP projects as non-stipended volunteers in communities where there is no RSVP project or where agreement is reached with the RSVP project that allows for the enrollment of non-stipended volunteers in the SCP project.

[64 FR 14115, Mar. 24, 1999, as amended at 74 FR 46508, Sept. 10, 2009]

§ 2551.102 What are the conditions of service of non-stipended Senior Companions?

Non-stipended Senior Companions serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Senior Companions.

(b) No special privilege or status is granted or created among Senior Companions, stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Senior Companions.

(d) All regulations and requirements applicable to the program, with the exception listed in paragraph (f) of this section, apply to all Senior Companions.

(e) Non-stipended Senior Companions may be placed in separate volunteer stations where warranted.

(f) Non-stipended Senior Companions will be encouraged but not required to serve an average of 20 hours per week and nine months per year. Senior Companions will maintain a close person-to-person relationship with their assigned special needs clients on a regular basis.

(g) Non-stipended Senior Companions may contribute the costs they incur in connection with their participation in the program. Such contributions are not counted as part of the required non-federal share of the grant but may be reflected in the budget column for excess non-federal resources.

§ 2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?

Enrollment of non-stipended Senior Companions is not a factor in the award of new or continuation grants.

§ 2551.104 May Corporation funds be used for non-stipended Senior Companions?

Federally appropriated funds for SCP shall not be used to pay any cost, including any administrative cost, incurred in implementing the regulations in this part for non-stipended Senior Companions.

Subpart K—Non-Corporation Funded SCP Projects

§ 2551.111 Under what conditions can an agency or organization sponsor a Senior Companion project without Corporation funding?

An eligible agency or organization who wishes to sponsor a Senior Companion project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Senior Companion Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2551.112 What benefits are a non-Corporation funded project entitled to?

The Memorandum of Agreement entitles the sponsor of a non-Corporation funded project to:

(a) All technical assistance and materials provided to Corporation-funded Senior Companion projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2551.113 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA to a sponsor of a non-Corporation funded project, does not create a financial obligation on the part of the Corporation for any costs associated with the project, including increases in required payments to Senior Companion's that may result from changes in the Act or in program regulations.

§ 2551.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2551.112.

Subpart L—Restrictions and Legal Representation

§ 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the Senior Companion Program.

(b) *Non-displacement of employed workers.* A Senior Companion shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A Senior Companion volunteer station may contribute to the financial support of the Senior Companion Program. However, this support shall not be a required precondition for a potential station to obtain Senior Companion service.

(4) If a volunteer station agrees to provide funds to support additional Senior Companions or pay for other Senior Companion support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Senior Companion receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Senior Companion on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Senior Companion with a disability is qualified to serve.

(g) *Religious activities.* (1) A Senior Companion or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his or her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the community group established by the sponsor under Subpart B of this part and with notification to the Corporation.

[64 FR 14115, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004]

§ 2551.122 What legal coverage does the Corporation make available to Senior Companions?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Senior Companion are

paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Senior Companion's activities. The circumstances under which the Corporation shall pay such expenses are specified in 45 CFR part 1220.

PART 2552—FOSTER GRANDPARENT PROGRAM

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AUTHORITY: 42 U.S.C. 4950 *et seq.;* 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

SOURCE: 64 FR 14126, Mar. 24, 1999, unless otherwise noted.

Subpart A—General

§ 2552.11 What is the Foster Grandparent Program?

The Foster Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are to be used to support Foster Grandparents in providing supportive, person to person service to children with exceptional needs, or in circumstances that limit their academic, social, or emotional development.

[74 FR 46508, Sept. 10, 2009]

§ 2552.12 Definitions.

(a) *Act*. The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq*.

(b) *Adequate staffing level*. The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted volunteers/Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

(c) *Annual income*. Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

(d) *Chief Executive Officer*. The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq*.

(e) *Child*. Any individual who is less than 21 years of age.

(f) *Children having exceptional needs*. Children who are developmentally disabled, such as those who are autistic, have cerebral palsy or epilepsy, are visually impaired, speech impaired, hearing impaired, orthopedically impaired, are emotionally disturbed or have a language disorder, specific learning disability, have multiple disabilities, other significant health impairment or have literacy needs. Existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, registered nurse or licensed practical nurse, speech therapist or educator before a Foster Grandparent is assigned to the child.

(g) *Children with special needs*. Children who are abused or neglected; in need of foster care; adjudicated youth; homeless youths; teen-age parents; and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

(h) *Corporation*. The Corporation for National and Community Service established under the NCSA. The Corporation is also sometimes referred to as CNCS.

(i) *Cost reimbursements*. Reimbursements provided to volunteers such as stipends to cover incidental costs, meals, and transportation, to enable them to serve without cost to themselves. Also included are the costs of annual physical examinations, volunteer insurance and recognition which are budgeted as Volunteer Expenses.

(j) *In-home.* The non-institutional assignment of a Foster Grandparent in a private residence or a foster home.

(k) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor and the parent or persons legally responsible for the child served by the Foster Grandparent. It authorizes the assignment of a Foster Grandparent in the child's home, defines the Foster Grandparent's activities and delineates specific arrangements for supervision.

(l) *Memorandum of Understanding.* A written statement prepared and signed by the Foster Grandparent project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

(m) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), the Senior Companion Program (SCP), and Demonstration Programs established under Title II Parts A, B, C, and E, of the Act. NSSC is also referred to as the ''Senior Corps''.

(n) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions, required to be raised by the sponsor in support of the grant.

(o) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(p) *Parent.* A natural parent or a person acting in place of a natural parent, such as a guardian, a child's natural grandparent, or a step-parent with whom the child lives. The term also includes otherwise unrelated individuals who are legally responsible for a child's welfare.

(q) *Project.* The locally planned and implemented Foster Grandparent Program activity or set of activities as agreed upon between a sponsor and the Corporation.

(r) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act, 29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(s) *Service area.* The geographically defined area in which Foster Grandparents are recruited, enrolled, and placed on assignments.

(t) *Service schedule.* A written delineation of the days and times a Foster Grandparent serves each week.

(u) *Sponsor.* A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of a Foster Grandparent project.

(v) *Stipend.* A payment to Foster Grandparents to enable them to serve without cost to themselves. The amount of the stipend is determined by the Corporation and is payable in regular installments. The minimum amount of the stipend is set by law and shall be adjusted by the CEO from time to time.

(w) *Trust Act.* The National and Community Service Trust Act of 1993, Pub. L. 103–82, Sept. 21, 1993, 107 Stat. 785.

(x) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(y) *Volunteer assignment plan.* A written description of a Foster Grandparent's assignment with a child. The plan identifies specific outcomes for the child served and the activities of the Foster Grandparent.

(z) *Volunteer station.* A public agency, secular or faith-based private non-profit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of Foster Grandparents in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004]

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2552.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, both secular and faith-based, in the United States that have the authority to accept and the capability to administer a Foster Grandparent project.

[69 FR 60095, Oct. 7, 2004]

§ 2552.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Foster Grandparent Program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. A sponsor shall comply with all program regulations and policies, and grant provisions prescribed by the Corporation.

§ 2552.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus Foster Grandparent resources on providing supportive services and companionship to children with special and exceptional needs, or in circumstances that limit their academic, social, or emotional development within the project's service area.

(b) Assess in collaboration with other community organizations or utilize existing assessment of the needs of the client population in the community and develop strategies to respond to those needs using the resources of Foster Grandparents.

(c) Develop and manage a system of volunteer stations by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Foster Grandparents;

(2) Ensuring that the placement of Foster Grandparents will be governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against Foster Grandparents or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop Foster Grandparent service opportunities to support locally-identified needs of eligible children in a way that considers the skills and experiences of Foster Grandparents.

(e) Consider the demographic make-up of the project service area in the enrollment of Foster Grandparents, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Foster Grandparents with assignments that show direct and demonstrable benefits to the children and the community served, the Foster Grandparents, and the volunteer station; with required cost reimbursements specified in § 2552.46; with not less than 40 hours of orientation of which 20 hours must be pre-service, and an average of 4 hours of monthly in-service training.

(g) Encourage the most efficient and effective use of Foster Grandparents by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Develop, and annually update, a plan for promoting senior service within the project's service area.

(j) Annually assess the accomplishments and impact of the project on the identified needs and problems of the client population in the community.

(k) Establish written service policies for Foster Grandparents that include but are not limited to annual and sick

leave, holidays, service schedules, termination, appeal procedures, meal and transportation reimbursements.

(l) Conduct criminal history checks on all Foster Grandparents and Foster Grandparent grant-funded employees who start service, or begin work, in your program after November 23, 2007, in accordance with the National Service Criminal History Check requirements in 45 CFR 2540.200 through 2540.207.

[64 FR 14126, Mar. 24, 1999, as amended at 67 FR 61000, Sept. 27, 2002; 69 FR 60095, Oct. 7, 2004; 74 FR 46508, Sept. 10, 2009; 77 FR 60934, Oct. 5, 2012]

§ 2552.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable of human and social needs of the community;

(2) Competent in the field of community service, volunteerism and children's issues;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and programming for impact;

(4) With interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2552.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope, and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with other similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and Foster Grandparent activities. This includes provision of appropriate insurance coverage for Foster Grandparents, vehicles and other properties used in the project.

(g) Establish record keeping/reporting systems in compliance with Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

§ 2552.26–2552.32 [Reserved]

§ 2552.33 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program grant.

[64 FR 14126, Mar. 24, 1999. Redesignated at 48584, Aug. 24, 2007]

Subpart C—Suspension and Termination of Corporation Assistance

§ 2552.34 What are the rules on suspension, termination, and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to ensure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Foster Grandparent Program are specified in 45 CFR part 1206.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007]

Subpart D—Foster Grandparent Eligibility, Status and Cost Reimbursements

§ 2552.41 Who is eligible to be a Foster Grandparent?

(a) To be a Foster Grandparent an individual must:

(1) Be 55 years of age or older;

(2) Be determined by a physical examination to be capable, with or without reasonable accommodation, of serving children with exceptional or special needs without detriment to either himself/herself or the children served;

(3) Agree to abide by all requirements as set forth in this part; and

(4) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart D.

(b) Eligibility to be a Foster Grandparent shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap, or political affiliation.

[64 FR 14126, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009]

§ 2552.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Foster Grandparent or as a Foster Grandparent grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Foster Grandparent or as a Foster Grandparent grant-funded employee.

[74 FR 46509, Sept. 10, 2009]

§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?

(a) To receive a stipend, a Foster Grandparent may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which

he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

(b) For applicants to become stipended Foster Grandparents, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Foster Grandparents, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence. Sponsors shall count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party pay or, and which do not exceed 50 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

[64 FR 14126, Mar. 24, 1999, as amended at 67 FR 61000, Sept. 27, 2002; 69 FR 19775, Apr. 14, 2004. Redesignated at 72 FR 48585, Aug. 24, 2007; 74 FR 46509, Sept. 10, 2009]

§ 2552.44 What is considered income for determining volunteer eligibility?

(a) For determining eligibility, ''income'' refers to total cash and in-kind receipts before taxes from all sources including:

(1) Money, wages, and salaries before any deduction, but not including food or rent in lieu of wages;

(2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;

(3) Regular payments for public assistance, Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, child support, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, and regular insurance or annuity payments; and

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury.

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48585, Aug. 24, 2007]

§ 2552.45 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?

Foster Grandparents are volunteers, and are not employees of the sponsor, the volunteer station, the Corporation, or the Federal Government.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48585, Aug. 24, 2007]

§ 2552.46 What cost reimbursements are provided to Foster Grandparents?

Cost reimbursements include:

(a) *Stipend.* Foster Grandparents who are income eligible will receive a stipend in an amount determined by the Corporation and payable in regular installments, to enable them to serve without cost to themselves. The stipend is paid for the time Foster Grandparents spend with their assigned children, for earned leave, and for attendance at official project events.

(b) *Insurance.* A Foster Grandparent is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Foster Grandparents for personal injury during travel between

their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For Foster Grandparents who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) Foster Grandparents who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

(c) *Transportation.* Foster Grandparents shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(d) *Physical examination.* Foster Grandparents are provided a physical examination prior to assignment and annually thereafter to ensure that they will be able to provide supportive service without injury to themselves or the children served.

(e) *Meals and recognition.* Foster Grandparents shall be provided the following within limits of the project's available resources:

(1) Assistance with the cost of meals taken while on assignment; and

(2) Recognition for their service.

(f) *Other volunteer expenses.* Foster Grandparents may be reimbursed for expenses incurred while performing their volunteer assignments, provided these expenses are described in the Memorandum of Understanding negotiated with the volunteer station to which the volunteer is assigned and there are sufficient funds available to cover these expenses and meet all other requirements identified in the notice of grant award.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 19775, Apr. 14, 2004; 69 FR 56718, Sept. 22, 2004. Redesignated at 72 FR 48585, Aug. 24, 2007]

§ 2552.47 May the cost reimbursements of a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. Foster Grandparent's cost reimbursements are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, and do not reduce or eliminate the level of, or eligibility for, assistance or services a Foster Grandparent may be receiving under any governmental program.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48585, Aug. 24, 2007]

Subpart E—Foster Grandparent Terms of Service

§ 2552.51 What are the terms of service of a Foster Grandparent?

A Foster Grandparent shall serve a minimum of 15 hours per week and a maximum of 40 hours per week. A Foster Grandparent shall not serve more than 2088 hours per year. Within these limitations, a sponsor may set service policies consistent with local needs.

[67 FR 61000, Sept. 27, 2002]

§ 2552.52 What factors are considered in determining a Foster Grandparent's service schedule?

(a) Travel time between the Foster Grandparent's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended only if it is specified in the goal statement as part of the service activity.

§ 2552.53 Under what circumstances may a Foster Grandparent's service be terminated?

(a) A sponsor may remove a Foster Grandparent from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision. A Foster Grandparent may also be removed from service for having income in excess of the eligibility level.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2552.61 May a sponsor serve as a volunteer station?

Yes, a sponsor may serve as a volunteer station, provided this is part of the application workplan approved by the Corporation.

[67 FR 61000, Sept. 27, 2002]

§ 2552.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of Foster Grandparent volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§ 2552.71 through 2552.72 and regularly assess those assignments for continued appropriateness.

(b) Select eligible children for assigned volunteers.

(c) Develop a written volunteer assignment plan for each child that identifies the role and activities of the Foster Grandparent and expected outcomes for the child served.

(d) Obtain a Letter of Agreement for Foster Grandparents assigned in-home. This letter must comply with all Federal, State and local regulations.

(e) Provide Foster Grandparents serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation; and

(3) Appropriate recognition.

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Foster Grandparents while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Foster Grandparents assigned to it.

(i) Comply with all applicable civil rights laws and regulations including reasonable accommodation for Foster Grandparents with disabilities.

(j) Undertake such other responsibilities as may be necessary to the successful performance of Foster Grandparents in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Foster Grandparent Placements and Assignments

§ 2552.71 What requirements govern the assignment of Foster Grandparents?

Foster Grandparent assignments shall:

(a) Provide for Foster Grandparents to give direct services to one or more eligible children. Foster Grandparents cannot be assigned to roles such as teacher's aides, group leaders or other similar positions that would detract from the person-to-person relationship.

(b) Result in person-to-person supportive relationships with each child served.

(c) Support the development and growth of each child served.

(d) Be meaningful to the Foster Grandparent.

(e) Be supported by appropriate orientation, training and supervision.

§ 2552.72 Is a written volunteer assignment plan required for each volunteer?

(a) All Foster Grandparents shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Foster Grandparent;

(2) Identifies the individual child(ren) to be served;

(3) Identifies the role and activities of the Foster Grandparent and expected outcomes for the child;

(4) Addresses the period of time each child should receive such services; and

(5) Is used to review the status of the Foster Grandparent's services in working with the assigned child, as well as the impact of the assignment on the child's development.

(b) If there is an existing plan that incorporates paragraphs (a)(2), (3), and (4) of this section, that plan shall meet the requirement.

Subpart H—Children Served

§ 2552.81 What type of children are eligible to be served?

Foster Grandparents serve only children and youth with special and exceptional needs, or in circumstances that limit their academic, social, or emotional development, who are less than 21 years of age.

[74 FR 46509, Sept. 10, 2009]

§ 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

(a) Only when a Foster Grandparent has been assigned to, and has developed a relationship with, a child with a disability, that assignment may continue beyond the individual's 21st birthday, provided that:

(1) Such individual was receiving such services prior to attaining the chronological age of 21, and the continuation of service is in the best interest of the individual; and

(2) The sponsor determines that it is in the best interest of both the Foster Grandparent and the individual for the assignment to continue. Such a determination will be made through mutual agreement by all parties involved in the provision of services to the individual served.

(b) In cases where the assigned Foster Grandparent becomes unavailable to serve a particular individual, the replacement of that Foster Grandparent shall be made through mutual agreement by all parties involved.

(c) The sponsor may terminate service to a child with a disability over age 21, if it determines that such service is no longer in the best interest of either the Foster Grandparent or the individual served.

[64 FR 14126, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009]

Subpart I—Application and Fiscal Requirements

§ 2552.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application for a grant at any time.

(2) Before submitting an application an applicant shall determine the availability of funds from the Corporation.

(3) The Corporation may also solicit grants. Applicants solicited under this provision are not assured of selection or approval and may have to compete with other solicited or unsolicited applications.

(b) *What must an eligible organization include in a grant application?* (1) An applicant shall complete standard forms prescribed by the Corporation.

(2) The applicant shall comply with the provisions of Executive Order 12372 ''Intergovernmental Review of Federal Programs,'' (3 CFR, 1982 Comp., p.197) in 45 CFR Part 1233, and any other applicable requirements.

(c) *Who reviews the merits of an application and how is a grant awarded?* (1) The Corporation reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. When funds are available, the Corporation awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program. The award will be documented by Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are the parties to the NGA. The NGA will document the

sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide financial support to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return an application that is not approved for funding to the applicant with an explanation of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards a Foster Grandparent grant for a specified period that is usually 12 months in duration.

§ 2552.92 What are project funding requirements?

(a) *Is non-Corporation support required?* A Corporation grant may be awarded to fund up to 90 percent of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does the Corporation allow less than the 10 percent non-Corporation support?* The Corporation may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-Corporation support required?* Whenever locally generated contributions to Foster Grandparent projects are in excess of the minimum 10 percent non-Corporation support required, the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* 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 audit by the Corporation, its Inspector General or their authorized agents.

(e) *How are Foster Grandparent cost reimbursements budgeted?* (1) Except as provided in (e)(2) of this section, the total of cost reimbursements for Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, shall be a sum equal to at least 80 percent of the amount of the Federal share of the grant award. Federal, required non-Federal, and excess non-Federal resources can be used to make up the amount allotted for cost reimbursements.

(2) The Corporation may allow exceptions to the 80 percent cost reimbursement requirement in cases of demonstrated need such as:

(i) Initial difficulties in the development of local funding sources during the first three years of operations; or

(ii) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(iii) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(f) *May a sponsor pay stipends at a rate different than the rate established by the Corporation?* A sponsor shall pay stipends at the same rate as that established by the Corporation.

[64 FR 14126, Mar. 24, 1999, as amended at 75 FR 51415, Aug. 20, 2010]

§ 2552.93 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at

the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for the following changes in the approved grant:

(1) Reduction in budgeted volunteer service years.

(2) Change in the service area.

(3) Transfer of budgeted line items from Volunteer Expenses to Support Expenses. This requirement does not apply if the 80 percent volunteer cost reimbursement ratio is maintained.

[79 FR 76077, Dec. 19, 2014]

Subpart J—Non-Stipended Foster Grandparents

§ 2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents without stipends?

Over-income persons, age 55 or over, may be enrolled in FGP projects as non-stipended volunteers in communities where there is no RSVP project or where agreement is reached with the RSVP project that allows for the enrollment of non-stipended volunteers in the FGP project.

[64 FR 14126, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009]

§ 2552.102 What are the conditions of service of non-stipended Foster Grandparents?

Non-stipended Foster Grandparents serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Foster Grandparents.

(b) No special privilege or status is granted or created among Foster Grandparents, stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Foster Grandparents.

(d) All regulations and requirements applicable to the program, with the exception listed in paragraph (f) of this section, apply to all Foster Grandparents.

(e) Non-stipended Foster Grandparents may be placed in separate volunteer stations where warranted.

(f) Non-stipended Foster Grandparents will be encouraged but not required to serve an average of 20 hours per week and nine months per year. Foster Grandparents will maintain a close person-to-person relationship with their assigned children on a regular basis.

(g) Non-stipended Foster Grandparents may contribute the costs they incur in connection with their participation in the program. Such contributions are not counted as part of the required non-federal share of the grant but may be reflected in the budget column for excess non-federal resources.

§ 2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?

Enrollment of non-stipended Foster Grandparents is not a factor in the award of new or continuation grants.

§ 2552.104 May Corporation funds be used for non-stipended Foster Grandparents?

Federally appropriated funds for FGP shall not be used to pay any cost, including any administrative cost, incurred in implementing the regulations in this part for non-stipended Foster Grandparents.

Subpart K—Non-Corporation Funded Foster Grandparent Program Projects

§ 2552.111 Under what conditions can an agency or organization sponsor a Foster Grandparent project without Corporation funding?

An eligible agency or organization who wishes to sponsor a Foster Grandparent project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Foster Grandparent Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2552.112 What benefits are a non-Corporation funded project entitled to?

The Memorandum of Agreement entitles the sponsor of a non-Corporation funded project to:

(a) All technical assistance and materials provided to Corporation-funded Foster Grandparent projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2552.113 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA to a sponsor of a non-Corporation funded project, does not create a financial obligation on the part of the Corporation for any costs associated with the project, including increases in required payments to Foster Grandparents that may result from changes in the Act or in program regulations.

§ 2552.114 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2552.112.

Subpart L—Restrictions and Legal Representation

§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the FGP.

(b) *Non-displacement of employed workers.* A Foster Grandparent shall not perform any service or duty or engage

in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A Foster Grandparent volunteer station may contribute to the financial support of the FGP. However, this support shall not be a required precondition for a potential station to obtain Foster Grandparent service.

(4) If a volunteer station agrees to provide funds to support additional Foster Grandparents or pay for other Foster Grandparent support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Foster Grandparent receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Foster Grandparent on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Foster Grandparent with a disability is qualified to serve.

(g) *Religious activities.* (1) A Foster Grandparent or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his or her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the community group established by the sponsor under Subpart B of this part and with notification to the Corporation.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004]

§ 2552.122 What legal coverage does the Corporation make available to Foster Grandparents?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a Foster Grandparent

are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the Foster Grandparent's activities pursuant to the Act. The circumstances under which the Corporation may pay such expenses are specified in 45 CFR part 1220.

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

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AUTHORITY: 42 U.S.C. 4950 *et seq.*

SOURCE: 64 FR 14135, Mar. 24, 1999, unless otherwise noted.

Subpart A—General

§ 2553.11 What is the Retired and Senior Volunteer Program?

The Retired and Senior Volunteer Program (RSVP) provides grants to qualified agencies and organizations for the dual purpose of: engaging persons 55 and older in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of volunteers.

§ 2553.12 Definitions.

(a) *Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

(b) *Adequate staffing level.* The number of project staff or full-time equivalent needed by a sponsor to manage NSSC project operations considering such factors as: number of budgeted volunteers, number of volunteer stations, and the size of the service area.

(c) *Assignment.* The activities, functions or responsibilities to be performed by volunteers identified in a written outline or description.

(d) *Chief Executive Officer.* The Chief Executive Officer of the Corporation appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

(e) *Corporation.* The Corporation for National and Community Service established under the NCSA. The Corporation is also sometimes referred to as CNCS.

(f) *Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers to cover incidental costs, meals, transportation, volunteer insurance, and recognition to enable them to serve without cost to themselves.

(g) *Letter of Agreement.* A written agreement between a volunteer station, the sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of a RSVP volunteer in the home of a client, defines RSVP volunteer activities, and specifies supervision arrangements.

(h) *Memorandum of Understanding.* A written statement prepared and signed by the RSVP project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

(i) *National Senior Service Corps (NSSC).* The collective name for the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and the Senior Companion Program (SCP), and Demonstration Programs established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the ''Senior Corps''.

(j) *Non-Corporation support (required).* The percentage share of non-Federal cash and in-kind contributions required to be raised by the sponsor in support of the grant, including non-Corporation federal, state and local governments and privately raised contributions.

(k) *Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

(l) *Performance measures.* Indicators intended to help determine the impact of an RSVP project on the community, including the volunteers. Performance measures currently include, but are not limited to, the following performance indicators:

(1) *Output indicator.* The amount or units of service that RSVP volunteers have completed, or the number of people the project has served. An output indicator does not provide information on benefits or other changes in the lives of the volunteers or the people served.

(2) *Outcome indicator.* Specifies a change that has occurred in the lives of the people served or the volunteers. It is an observable and measurable indication of whether or not a project is making progress toward its outcome target.

(m) *Project.* The locally planned and implemented RSVP activity or set of activities in a service area as agreed upon between a sponsor and the Corporation.

(n) *Qualified individual with a disability.* An individual with a disability (as defined in the Rehabilitation Act,

29 U.S.C. 705 (20)) who, with or without reasonable accommodation, can perform the essential functions of a volunteer position that such individual holds or desires. If a sponsor has prepared a written description before advertising or interviewing applicants for the position, the written description may be considered evidence of the essential functions of the volunteer position.

(o) *Service area.* The geographically defined area approved in the grant application, in which RSVP volunteers are recruited, enrolled, and placed on assignments.

(p) *Sponsor.* A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of an RSVP project.

(q) *Trust Act.* The National and Community Service Trust Act of 1993, as amended, Public Law 103–82, Sept. 21, 1993, 107 Stat. 785.

(r) *United States and States.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(s) *Volunteer station.* A public agency, secular or faith-based private non-profit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of RSVP volunteers in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[64 FR 14135, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 76 FR 20246, Apr. 12, 2011]

Subpart B—Eligibility and Responsibilities of a Sponsor

§ 2553.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, both secular and faith-based, in the United Sates that have authority to accept and the capability to administer an RSVP project.

[69 FR 60095, Oct. 7, 2004]

§ 2553.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the RSVP program as specified in the Act. A sponsor shall not delegate or contract these responsibilities to another entity. A sponsor shall comply with all regulations contained in this part, policies, and grant provisions prescribed by the Corporation.

§ 2553.23 What are a sponsor's program responsibilities?

A sponsor shall:

(a) Focus RSVP resources to have a positive impact on critical human and social needs within the project service area.

(b) Assess in collaboration with other community organizations or utilize existing assessments of the needs of the community or service area and develop strategies to respond to those needs using the resources of RSVP volunteers.

(c) Develop and manage a system of volunteer stations to provide a wide range of placement opportunities that appeal to persons age 55 and over by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of RSVP volunteers to meet locally identified needs;

(2) Ensuring the placement of RSVP volunteers is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years; and

(iv) That states the station assures it will not discriminate against RSVP volunteers or in the operation of its program on the basis of race; color; national origin, including individuals with limited English proficiency; sex; age; political affiliation; religion; or on

the basis of disability, if the participant or member is a qualified individual with a disability; and

(3) Annually assessing the placement of RSVP volunteers to ensure the safety of volunteers and their impact on meeting the needs of the community.

(d) Consider the demographic makeup of the project service area in the enrollment of RSVP volunteers, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities and under represented groups.

(e) Encourage the most efficient and effective use of RSVP volunteers by coordinating project services and activities with related national, state and local programs, including other Corporation programs.

(f) Develop, and annually update, a plan for promoting service by older adults within the project service area.

(g) Conduct an annual assessment of the accomplishments and impact of the project and how they meet the identified needs and problems of the community.

(h) Provide RSVP volunteers with cost reimbursements specified in § 2553.43.

(i) Minimize any disruption to RSVP volunteers when one sponsor is replaced by another as a result of relinquishment, denial of refunding, or recompetition of a grant.

(j) Make every effort to meet such performance measures as may be established for the RSVP project by mutual agreement.

[64 FR 14135, Mar. 24, 1999, as amended at 67 FR 6875, Feb. 14, 2002; 69 FR 60095, Oct. 7, 2004; 76 FR 20246, Apr. 12, 2011]

§ 2553.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable about human and social needs of the community;

(2) Competent in the field of community service and volunteerism;

(3) Capable of helping the sponsor meet its administrative and program responsibilities including fund-raising, publicity and programming for impact;

(4) With an interest in and knowledge of the capability of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how this participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

§ 2553.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish program objectives and manage the functions and activities delegated to project staff for NSSC program(s) within its control. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. The project director may participate in activities to coordinate program resources with those of related local agencies, boards or organizations. A sponsor may negotiate the employment of a part-time project director with the Corporation when it can be demonstrated that such an arrangement will not adversely affect the size, scope and quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable with similar staff positions in the sponsor organization and/or project service area.

(f) Establish risk management policies and procedures covering project and RSVP activities. This includes provision of appropriate insurance coverage for RSVP volunteers, vehicles and other properties used in the project.

(g) Establish record keeping and reporting systems in compliance with

Corporation requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with Corporation evaluation and data collection efforts.

(h) Comply with and ensure that all volunteer stations comply with all applicable civil rights laws and regulations, including providing reasonable accommodation to qualified individuals with disabilities.

(i) Conduct criminal history checks on all grant-funded staff employed on or after October 1, 2009, in accordance with the requirements in 45 CFR 2540.200–207.

[64 FR 14135, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009]

§ 2553.26 May a sponsor administer more than one program grant from the Corporation?

A sponsor may administer more than one Corporation program grant.

Subpart C—Suspension, Termination and Denial of Refunding

§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he or she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Corporation; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held in locations convenient to the recipient agency.

(c) Beginning in FY 2013, the procedures for suspension and termination of RSVP grants, which are specified in 45 CFR part 1206, shall continue to apply, but the procedures in part 1206 applicable to denial of refunding of an RSVP grantee shall not apply to any grant awarded through the competitive process described in § 2553.71 of this part.

[64 FR 14135, Mar. 24, 1999, as amended at 76 FR 20246, Apr. 12, 2011]

Subpart D—Eligibility, Cost Reimbursements and Volunteer Assignments

§ 2553.41 Who is eligible to be a RSVP volunteer?

(a) To be an RSVP volunteer, an individual must:

(1) Be 55 years of age or older;

(2) Agree to serve without compensation;

(3) Reside in or nearby the community served by RSVP;

(4) Agree to abide by all requirements as set forth in this part.

(b) Eligibility to serve as a RSVP volunteer shall not be restricted on the basis of formal education, experience, race, religion, color, national origin, sex, age, handicap or political affiliation.

§ 2553.42 Is a RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?

RSVP volunteers are not employees of the sponsor, the volunteer station,

the Corporation, or the Federal Government.

§ 2553.43 What cost reimbursements are provided to RSVP volunteers?

RSVP volunteers are provided the following cost reimbursements within the limits of the project's available resources:

(a) *Transportation.* RSVP volunteers shall receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(b) *Meals.* RSVP volunteers shall receive assistance with the cost of meals taken while on assignment.

(c) *Recognition.* RSVP volunteers shall be provided recognition for their service.

(d) *Insurance.* A RSVP volunteer is provided with the Corporation-specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers RSVP volunteers for personal injury during travel between their homes and places of assignment, during their volunteer service, during meal periods while serving as a volunteer, and while attending project sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For RSVP volunteers who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance the volunteers carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by the Corporation for each person, each accident, and for property damage.

(ii) RSVP volunteers who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by the Corporation.

(e) *Other volunteer expenses.* RSVP volunteers may be reimbursed for expenses incurred while performing their volunteer assignments, provided these expenses are described in the Memorandum of Understanding negotiated with the volunteer station and there are sufficient funds available to cover these expenses and meet all other requirements identified in the notice of grant award.

[64 FR 14135, Mar. 24, 1999, as amended at 69 FR 20831, Apr. 19, 2004; 69 FR 56718, Sept. 22, 2004]

§ 2553.44 May cost reimbursements received by a RSVP volunteer be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?

No. RSVP volunteers' cost reimbursements are not subject to any tax or charge and are not treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, do not reduce or eliminate the level of or eligibility for assistance or services a volunteer may be receiving under any governmental program.

Subpart E—Volunteer Terms of Service

§ 2553.51 What are the terms of service of a RSVP volunteer?

A RSVP volunteer shall serve weekly on a regular basis, or intensively on short-term assignments consistent with the assignment description.

§ 2553.52 Under what circumstances may a RSVP volunteer's service be terminated?

(a) A sponsor may remove a RSVP volunteer from service for cause. Grounds for removal include but are not limited to: extensive and unauthorized absences; misconduct; inability to perform assignments; and failure to accept supervision.

(b) The sponsor shall establish appropriate policies on service termination as well as procedures for appeal from such adverse action.

Subpart F—Responsibilities of a Volunteer Station

§ 2553.61 When may a sponsor serve as a volunteer station?

The sponsor may function as a volunteer station, provided that no more than 5% of the total number of volunteers budgeted for the project are assigned to it in administrative or support positions. This limitation does not apply to the assignment of volunteers to other programs administered by the sponsor or special volunteer activities of the project. The RSVP project itself may function as a volunteer station or may initiate special volunteer activities provided the Corporation agrees that these activities are in accord with program objectives and will not hinder overall project operations.

§ 2553.62 What are the responsibilities of a volunteer station?

A volunteer station shall undertake the following responsibilities in support of RSVP volunteers:

(a) Develop volunteer assignments that impact critical human and social needs, and regularly assess those assignments for continued appropriateness;

(b) Assign staff member responsible for day to day oversight of the placement of RSVP volunteers within the volunteer station and for assessing the impact of volunteers in addressing community needs;

(c) Obtain a Letter of Agreement for an RSVP volunteer assigned in-home. The Letter of Agreement shall comply with all Federal, State and local regulations;

(d) Keep records and prepare reports as required;

(e) Comply with all applicable civil rights laws and regulations including reasonable accommodation for RSVP volunteers with disabilities; and

(f) Provide assigned RSVP volunteers the following support:

(1) Orientation to station and appropriate in-service training to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation;

(3) Supervision while on assignment;

(4) Appropriate recognition; and

(5) Provide for the safety of RSVP volunteers assigned to it.

(g) Undertake such other responsibilities as may be necessary to the successful performance of RSVP volunteers in their assignments or as agreed to in the Memorandum of Understanding.

Subpart G—Application and Fiscal Requirements

§ 2553.71 What is the process for application and award of a grant?

As funds become available, the Corporation solicits applications for RSVP grants from eligible organizations through a competitive process.

(a) *What are the application requirements for an RSVP grant?* An applicant must:

(1) Submit required information determined by the Corporation.

(2) Demonstrate compliance with any applicable requirements specified in the Notice of Funding Availability or Notice of Funding Opportunity.

(b) *What process does the Corporation use to select new RSVP grantees?* (1) The Corporation reviews and determines the merits of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. In conducting its review during the competitive process, the Corporation considers the input and opinions of those serving on a peer review panel, including members with expertise in senior service and aging, and may conduct site inspections, as appropriate.

(2) The selection process includes:

(i) Determining whether an application complies with the application requirements, such as deadlines, eligibility, and programmatic requirements, including performance measurement requirements;

(ii) Applying published selection criteria, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity, to assess the quality of the application;

(iii) Applying any applicable priorities or preferences, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity;

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's RSVP grantee portfolio; and

(v) Identifying the applications that most completely respond to the published guidelines and offer the highest probability of successfully carrying out the overall purpose and objectives of the program.

(c) *How is a grant awarded?* (1) Subject to the availability of funds, the award will be documented by a Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide assistance to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, informing the applicant of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards an RSVP grant for a specified period that is 3 years in duration with an option for a grant renewal of 3 years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. The Corporation will use the Denial of Refunding procedures set forth in 45 CFR part 1206 to deny funding to a grantee when the Corporation determines that the grant should not be renewed for an additional 3 years.

(f) *What assistance in preparation for competitive award of all RSVP grants will the Corporation provide to sponsors who have previously received a grant and whose grants are expiring in fiscal year 2011, 2012, or 2013?* (1) For each grant expiring in fiscal years 2011, 2012, or 2013, the Corporation will evaluate the grant, to the maximum extent practicable, in fiscal years 2010, 2011, and 2012, respectively.

(2) The evaluation will give particular attention to the different needs of rural and urban projects, including those serving Native American communities, and will evaluate the extent to which the sponsor meets or exceeds performance measures, outcomes, and other criteria established by the Corporation.

(3) To the maximum extent practicable, the Corporation will ensure that each evaluation is conducted by a review team made up of trained individuals who are knowledgeable about RSVP, including current or former employees of the Corporation and representatives of communities served by RSVP volunteers, who will provide their input and opinions concerning each grant.

(4) The Corporation will use the evaluation findings as the basis for providing recommendations for program improvement, and for the provision of training and technical assistance.

(5) The evaluation will assess:

(i) The project's strengths and areas in need of improvement;

(ii) Whether the project has adequately addressed population and community-wide needs;

(iii) The efforts of the project to collaborate with other community-based organizations, units of government, and entities providing services to seniors, taking into account barriers to such collaboration that such programs may encounter;

(iv) The project's compliance with the program requirements for the appropriate use of Federal funds as embodied in a protocol for fiscal management;

(v) To what extent the project is in conformity with the eligibility, outreach, enrollment, and other requirements for RSVP projects; and

(vi) The extent to which the project is achieving other measures of performance developed by the Corporation, in consultation with the review team.

[76 FR 20246, Apr. 12, 2011]

§ 2553.72 What are project funding requirements?

(a) *Is non-Corporation support required?* (1) A Corporation grant may be awarded to fund up to 90 percent of the

total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years.

(2) A sponsor is responsible for identifying non-Corporation funds which may include in-kind contributions.

(b) *Under what circumstances does the Corporation allow less than the percentage identified in paragraph (a) of this section?* The Corporation may allow exceptions to the local support requirement identified in paragraph (a) of this section in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May the Corporation restrict how a sponsor uses locally generated contributions in excess of the non-Corporation support required?* Whenever locally generated contributions to RSVP projects are in excess of the non-Corporation funds required (10 percent of the total cost in the first year, 20 percent in the second year and 30 percent in the third and succeeding years), the Corporation may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and Non-Federal funds, including expenditures from excess locally generated contributions, are subject to audit by the Corporation, its Inspector General, or their authorized agents.

[64 FR 14135, Mar. 24, 1999, as amended at 67 FR 6875, Feb. 14, 2002]

§ 2553.73 What are grants management requirements?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205; and

(4) Other applicable Corporation requirements.

(b) Project support provided under a Corporation grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination allegations, either informally through a settlement agreement or formally as a result of a decision finding discrimination, are not allowable costs.

(f) Written Corporation approval/concurrence is required for a change in the approved service area.

[79 FR 76078, Dec. 19, 2014]

Subpart H—Non-Corporation Funded Projects

§ 2553.81 Under what conditions may an agency or organization sponsor a RSVP project without Corporation funding?

An eligible agency or organization who wishes to sponsor a RSVP project without Corporation funding, must sign a Memorandum of Agreement with the Corporation that:

(a) Certifies its intent to comply with all Corporation requirements for the Retired and Senior Volunteer Program; and

(b) Identifies responsibilities to be carried out by each party.

§ 2553.82 What benefits are a non-Corporation funded project entitled to?

(a) All technical assistance and materials provided to Corporation-funded RSVP projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

§ 2553.83 What financial obligation does the Corporation incur for non-Corporation funded projects?

Entry into a Memorandum of Agreement with, or issuance of an NGA to a sponsor of a non-Corporation funded project does not create a financial obligation on the part of the Corporation for any costs associated with the project.

§ 2553.84 What happens if a non-Corporation funded sponsor does not comply with the Memorandum of Agreement?

A non-Corporation funded project sponsor's noncompliance with the Memorandum of Agreement may result in suspension or termination of the Corporation's agreement and all benefits specified in § 2553.82.

Subpart I—Restrictions and Legal Representation

§ 2553.91 What legal limitations apply to the operation of the RSVP Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the RSVP Program.

(b) *Nondisplacement of employed workers.* A RSVP volunteer shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program, shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant; or, from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by the Corporation grant.

(3) A RSVP volunteer station may contribute to the financial support of the RSVP Program. However, this support shall not be a required precondition for a potential station to obtain RSVP volunteers.

(4) If a volunteer station agrees to provide funds to support additional volunteers or pay for other volunteer support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw

services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a RSVP volunteer receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a RSVP volunteer on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the volunteer with a disability is qualified to serve.

(g) *Religious activities.* (1) A RSVP volunteer or a member of the project staff funded by the Corporation shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to the Corporation.

[64 FR 14135, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004]

§ 2553.92 What legal coverage does the Corporation make available to RSVP volunteers?

It is within the Corporation's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a RSVP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which the Corporation may pay such expenses are specified in 45 CFR part 1220.

Subpart J—Performance Measurement

SOURCE: 76 FR 20247, Apr. 12, 2011, unless otherwise noted.

§ 2553.100 What is the purpose of this subpart?

This subpart sets forth the minimum performance measurement requirements for Corporation-funded Retired and Senior Volunteer Program (RSVP) projects.

§ 2553.101 What is the purpose of performance measurement?

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Reporting on performance measures is used by the Corporation as part of assessing the impact of the project on the community and on the accomplishment of the objectives established in the Corporation's Strategic Plan. In addition, as part of the competitive process, performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and the measurement of their impact on community needs.

§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?

An application to the Corporation for funding under RSVP must contain:

(a) Performance measures.

(b) Estimated performance data for the project years covered by the application.

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

§ 2553.103 Who develops the performance measures?

(a) An applicant is responsible for developing its own project-specific performance measures.

(b) In addition, the Corporation may establish performance measures that will apply to all Corporation-sponsored RSVP projects, which sponsors will be responsible for meeting.

§ 2553.104 What performance measures must be submitted to the Corporation and how are these submitted?

(a) An applicant for Corporation funds is required to submit at least one of each of the following types of performance measures as part of their application. The Corporation will provide standard forms.

(1) Output indicators.

(2) Outcome indicators.

(b) An applicant must also submit any uniform performance measures the Corporation may establish for all applicants.

(c) The Corporation may specify additional requirements relating to performance measures on an annual basis in program guidance and related materials.

§ 2553.105 How are performance measures approved and documented?

(a) The Corporation reviews and approves performance measures for all applicants that apply for funding from the Corporation.

(b) An applicant must follow Corporation-provided guidance and formats provided when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and the Corporation, will be documented in the Notice of Grant Award (NGA).

§ 2553.106 How does a sponsor report performance measures to the Corporation?

The Corporation will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

§ 2553.107 What must a sponsor do if it cannot meet its performance measures?

Whenever a sponsor finds it is not on track to meet its performance measures, it must develop a plan to get back on track or submit a request to the Corporation to amend its performance measures. The request must include all of the following:

(a) Why the project is not on track to meet its performance requirements;

(b) How the project has been tracking performance measures;

(c) Evidence of corrective steps taken;

(d) Any new proposed performance measures; and

(e) A plan to ensure that the project will meet the new proposed measure(s).

§ 2553.108 When may a sponsor change a project's performance measures?

Performance measures may be changed only if the Corporation approves the sponsor's request to do so.

§ 2553.109 What happens if a sponsor fails to meet the performance measures included in the Notice of Grant Award (NGA)?

If a sponsor fails to meet a target performance measure established in the NGA, the Corporation will negotiate a period of no more than one year for meeting the performance measure. At that point, if the sponsor still fails to meet the performance measure, the Corporation may take one or more of the following actions:

(a) Reduce the amount of the grant;

(b) Suspend, terminate, or deny refunding of the grant, in accordance

with the provisions of Section 2553.31 of this part;

(c) Take this information into account in assessing any application from the organization for a new grant or augmentation of an existing grant under any program administered by the Corporation;

(d) Amend the terms of any Corporation grant to the organization; or

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

PART 2554—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

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SOURCE: 72 FR 61912, Oct. 20, 2006, unless otherwise noted.

OVERVIEW AND DEFINITIONS

§ 2554.1 Overview of regulations.

(a) *Statutory basis.* This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (''the Act''). The Act provides the Corporation and other federal agencies

with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this part.

(b) *Possible remedies for program fraud.* In addition to any other penalties that may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to the Corporation is subject to a civil penalty of not more than $10,781 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by the Corporation. If the Corporation has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it also is subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by the Corporation because of the false claim.

[72 FR 61912, Oct. 20, 2006, as amended at 81 FR 40820, June 23, 2016]

§ 2554.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to the Corporation is subject to program fraud enforcement. A ''person'' means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced the Corporation to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several, that is, each is responsible for the entire amount.

(c) No proof of specific intent to defraud is required to establish liability under this part.

§ 2554.3 What is a claim?

(a) Claim means any request, demand, or submission:

(1) Made to the Corporation for property, services, or money;

(2) Made to a recipient of property, services, or money from the Corporation or to a party to a contract with the Corporation for property or services, or for the payment of money. This provision applies only when the claim is related to property, services or money from the Corporation or to a contract with the Corporation; or

(3) Made to the Corporation which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes the Corporation guaranteed loans made by participating lenders. A claim is made when it is received by the Corporation, an agent, fiscal intermediary, or other entity acting for the Corporation, or when it is received by the recipient of property, services, or money, or the party to a contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 2554.4 What is a statement?

A ''statement'' means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from the Corporation. ''From the Corporation'' means that the Corporation provides some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to the Corporation when it is received by the Corporation or an agent, fiscal intermediary, or other entity acting for the Corporation.

§ 2554.5 What is a false claim or statement?

(a) A claim submitted to the Corporation is a ''false'' claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to the Corporation is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 2554.6 What does the phrase "know or have reason to know" mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT

§ 2554.7 Who investigates program fraud?

The Inspector General, or his designee, is the investigating official responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents.

§ 2554.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his or her designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

(1) The reasons for the referral;

(2) The claims or statements upon which liability would be based;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(b) If at any time, the Attorney General or his or her designee requests in writing that this administrative process be stayed, the authority head, as identified in § 2554.9 of this Part, must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 2554.9 Who is the Corporation's authority head?

The Corporation's ''authority head'' is the Chief Executive Officer or his or her designee. For purposes of this Part,

the Corporation's Chief Financial Officer is designated to act on behalf of the Chief Executive Officer.

§ 2554.10 When will the Corporation issue a complaint?

The Corporation will issue a complaint:

(a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. ''A group of related claims submitted at the same time'' includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

§ 2554.11 What is contained in a complaint?

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to the Corporation is referred to as the ''defendant.''

(b) The reviewing official may join in a single complaint, false claims or statements that are unrelated, or that were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that the Corporation seeks to impose civil penalties, assessments, or both, against each defendant and will include:

(1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which each defendant may be held liable;

(3) A statement that each defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer;

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve any complaint on the defendant and, if a hearing is requested by the defendant, provide a copy to the Administrative Law Judge (ALJ) assigned to the case.

§ 2554.12 How will the complaint be served?

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

(1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence, usual dwelling place, principal office or place of business; or by

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) Proof of service—

(1) When service is made by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of receipt by the defendant or a representative, will serve as proof of service.

(e) When served with the complaint, the defendant also should be served with a copy of this Part 2554 and 31 U.S.C. 3801–3812.

PROCEDURES FOLLOWING SERVICE OF A COMPLAINT

§ 2554.13 How does a defendant respond to the complaint?

(a) A defendant may file an answer with the reviewing official within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with the ALJ and a copy must be served on the reviewing official.

§ 2554.14 What happens if a defendant fails to file an answer?

(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official will refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and describing the extraordinary circumstances that prevented the defendant from filing an answer, the initial decision will be stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

(i) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(l) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely

answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 2554.15 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file concurrently, the complaint and the answer with the ALJ, along with a designation of a Corporation representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of oral hearing upon the defendant and the representative for the Corporation, in the same manner as the complaint, service of which is described in § 2554.12. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for the Corporation; and

(6) Such other matters as the ALJ deems appropriate.

(d) The six-year statute of limitation may be extended by agreement of the parties.

Hearing Provisions

§ 2554.16 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

§ 2554.17 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and the Corporation. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 2554.18 What is the role of the ALJ?

An ALJ retained by the Corporation serves as the presiding officer at all hearings.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 2554.19 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 2554.20 How are issues brought to the attention of the ALJ?

(a) All applications to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 2554.21 How are papers served?

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 2554.12 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such

representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 2554.22 How is time computed?

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 2554.23 What happens during a prehearing conference?

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 2554.24 What rights are there to review documents?

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 2554.8 are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 2554.8 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 2554.13.

§ 2554.25 What type of discovery is authorized and how is it conducted?

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 2554.27 and 2554.28, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 2554.30.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 2554.30.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 2554.12.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 2554.26 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying the Corporation a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term ''information'' does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by § 2554.25.

§ 2554.27 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit

not provided to an opposing party unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

§ 2554.28 Can witnesses be subpoenaed?

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 2554.12. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 2554.29 Who pays the costs for a subpoena?

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 2554.30 Are protective orders available?

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 2554.31 Where is the hearing held?

The ALJ will hold the hearing in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made,

presented or submitted to the Corporation; or

(c) As agreed upon by the defendant and the ALJ.

§ 2554.32 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty and/or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) The Corporation must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 2554.33 How is evidence presented at the hearing?

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

§ 2554.34 How is witness testimony presented?

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 2554.27(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 2554.35 Will the hearing proceedings be recorded?

The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head. The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 2554.30.

§ 2554.36 Can a party informally discuss the case with the ALJ?

No. Such discussions are forbidden as ''ex parte communications'' with the ALJ. No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate.

This does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 2554.37 Are there sanctions for misconduct?

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 2554.38 Are post-hearing briefs required?

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

Decisions and Appeals

§ 2554.39 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after close of the hearing or expiration of any allowed time for submission of post-hearing briefs. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay and set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

§ 2554.40 How are penalty and assessment amounts determined?

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence that ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case

may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 2554.41 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) Any response to a motion for reconsideration will only be allowed if it is requested by the ALJ.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 2554.42 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of the Corporation, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the Corporation's authority head, as set forth in § 2554.43.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of the Corporation 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the authority head, within 30 days of the ALJ's order, as set forth in § 2554.43.

§ 2554.43 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the authority head within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional 30 days if an extension request is filed within the initial 30-day period and shows good cause.

(c) The defendant's appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) The Corporation's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ will forward the record of the proceeding to the authority head.

§ 2554.44 What happens if an initial decision is appealed?

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 2554.45 Are there any limitations on the right to appeal to the authority head?

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing

defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

§ 2554.46 How does the authority head dispose of an appeal?

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 2554.47 What judicial review is available?

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final Corporation decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

§ 2554.48 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head or the Attorney General, as appropriate.

§ 2554.49 How are civil penalties and assessments collected?

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions.

§ 2554.50 What happens to collections?

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 2554.51 What if the investigation indicates criminal misconduct?

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this part limits the requirement that the Corporation employees report suspected violations of criminal law to the Corporation's Office of Inspector General or to the Attorney General.

§ 2554.52 How does the Corporation protect the rights of defendants?

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority in accordance with 31 U.S.C. 3801. Except for purposes of settlement, or as a witness or a representative in public proceedings, no investigating official, reviewing official, or Corporation employee or agent who

helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the authority head. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for the Corporation may be employed in the offices of either the investigating official or the reviewing official.

PART 2555—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52893, Aug. 30, 2000, unless otherwise noted.

Subpart A—Introduction

§ 2555.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or

activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ 2555.105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means ''Director, Equal Opportunity''.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school

level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at §§ 2555.100 through 2555.605.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

[65 FR 52865, 52893, Aug. 30, 2000, as amended at 65 FR 52894, Aug. 30, 2000]

§ 2555.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action*. If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action*. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation*. Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 2555.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 2555.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 2555.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 2555.205 through 2555.235(a).

§ 2555.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 2555.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 2555.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ 2555.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 2555.300 through 2555.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 2555.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement,

bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 2555.200 Application.

Except as provided in §§ 2555.205 through 2555.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 2555.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ 2555.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 2555.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 2555.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 2555.225 and 2555.230, and §§ 2555.300 through 2555.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 2555.300 through 2555.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 2555.300 through 2555.310 apply to each recipient. A recipient to which §§ 2555.300 through 2555.310 apply shall not discriminate on the basis of sex in

admission or recruitment in violation of §§ 2555.300 through 2555.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 2555.300 through 2555.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ 2555.300 through 2555.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 2555.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 2555.300 through 2555.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 2555.300 through 2555.310.

§ 2555.230 Transition plans.

(a) *Submission of plans.* An institution to which § 2555.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 2555.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 2555.300 through 2555.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 2555.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 2555.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

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

(B) 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;

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

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

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

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

(B) 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

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 2555.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 2555.300 through 2555.310 apply, except as provided in §§ 2555.225 and 2555.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 2555.300 through 2555.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 2555.300 through 2555.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 2555.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 2555.305 Preference in admission.

A recipient to which §§ 2555.300 through 2555.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 2555.300 through 2555.310.

§ 2555.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 2555.300 through 2555.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 2555.110(a), and

may choose to undertake such efforts as affirmative action pursuant to § 2555.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 2555.300 through 2555.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 2555.300 through 2555.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 2555.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 2555.400 through 2555.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 2555.300 through 2555.310 do not apply, or an entity, not a recipient, to which §§ 2555.300 through 2555.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 2555.400 through 2555.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that

these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 2555.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 2555.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 2555.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 2555.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 2555.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 2555.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 2555.450.

§ 2555.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 2555.500 through 2555.550.

§ 2555.440 Health and insurance benefits and services.

Subject to § 2555.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 2555.500 through 2555.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 2555.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 2555.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification

for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 2555.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

§ 2555.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 2555.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether

full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 2555.500 through 2555.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ 2555.500 through 2555.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 2555.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 2555.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 2555.500 through 2555.550.

§ 2555.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 2555.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 2555.550.

§ 2555.525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 2555.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 2555.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § 2555.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 2555.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§ 2555.500

through 2555.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 2555.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 2555.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 2555.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 2555.500 through 2555.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 2555.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 2555.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR 1203.6 through 1203.12.

[65 FR 52894, Aug. 30, 2000]

PART 2556—VOLUNTEERS IN SERVICE TO AMERICA

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Subpart A—General Information

AUTHORITY: 42 U.S.C. 4951–4953; 5 CFR part 734.

SOURCE: 80 FR 63459, Oct. 20, 2015, unless otherwise noted.

§ 2556.1 What is the purpose of the VISTA program?

(a) The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems throughout the United States and certain U.S. territories. To effect this purpose, the VISTA program encourages and enables individuals from all walks of life to join VISTA to perform, on a full-time basis, meaningful and constructive service to assist in the solution of poverty and poverty-related problems and secure opportunities for self-advancement of persons afflicted by such problems.

(b) The VISTA program objectives are to:

(1) Generate private sector resources;

(2) Encourage volunteer service at the local level;

(3) Support efforts by local agencies and community organizations to achieve long-term sustainability of projects; and

(4) Strengthen local agencies and community organizations to carry out the purpose of the VISTA program.

§ 2556.3 Who should read this part?

This part may be of interest to:

(a) Private nonprofit organizations, public nonprofit organizations, state government agencies, local government agencies, federal agencies, and tribal government agencies who are participating in the VISTA program as sponsors, or who are interested in participating in the VISTA program as sponsors.

(b) Individuals 18 and older who are serving as a VISTA, or who are interested in serving as a VISTA.

§ 2556.5 What definitions apply in this part?

Act or *DVSA* means the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113 (42 U.S.C. 4951 *et seq.*).

Alternative oath or affirmation means a pledge of VISTA service taken by an individual who legally resides within a State, but who is not a citizen or national of the United States, upon that individual's enrollment into the VISTA program as a VISTA.

Applicant for VISTA service means an individual who is in the process of completing, or has completed, an application for VISTA service as prescribed by CNCS, but who has been not been approved by CNCS to be a candidate.

Application for VISTA service means the materials prescribed by CNCS to ascertain information on an individual's eligibility and suitability for VISTA service.

Area Manager means a CNCS official who is head of a designated, regional set, or cluster of CNCS State Offices, or equivalent CNCS official.

Assistance means VISTAs, leaders, or summer associates. ''Assistance'' also means technical assistance or training of VISTAs, leaders, summer associates, candidates, sponsors, or supervisors that are provided from funds appropriated by Congress for the purpose of supporting activities under the DVSA. ''Assistance'' also means grant funds.

Candidate, when used in the context of an individual who has applied for VISTA service, means an individual whose application for VISTA service has been approved by CNCS, but who has not taken an oath, alternative oath or affirmation to serve in the VISTA program. Candidates may include those who were enrolled in the VISTA program at a prior time.

Cost share means when an entity, such as a VISTA sponsor, reimburses CNCS part or all of the expenses associated with the operation of a VISTA project, such as the costs for one or more VISTAs, leaders, or summer associates placed in a VISTA project.

CNCS means the Corporation for National and Community Service, established pursuant to section 191 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12651. CNCS is also sometimes referred to as ''the Corporation.''

Education award or *Segal AmeriCorps Education Award* means an end-of-service monetary benefit from CNCS's National Service Trust that is directed to designated educational institutions and is awarded to certain qualifying VISTAs who successfully complete an established term of VISTA service.

Enroll, enrolled, or *enrollment,* when used in the context of VISTA service, refers to the status of an individual admitted to serve in the VISTA program. The enrollment period commences when the Oath to serve in the VISTA program is taken by the candidate and ends upon termination from a term of service in the VISTA program. The enrollment period may commence on a date earlier than the first day of a service assignment of an enrolled VISTA member.

Full-time, when used in the context of VISTA service means service in which a VISTA, leader, or summer associate remains available for service without regard to regular working hours.

Leader, a leader, or *a VISTA leader* means a VISTA member who is enrolled for full-time VISTA service, and who is also subject to the terms of subpart G of this part.

Living allowance or *living allowance payment* means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

Memorandum of Agreement means a written agreement between CNCS and a sponsor regarding the terms of the sponsor's involvement and responsibilities in the VISTA program.

Nonpartisan election means:

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Oath means an avowal to VISTA service, taken in accordance with 5 U.S.C. 3331, by an individual who is a U.S. citizen or national. The taking of the Oath effects an individual's enrollment into the VISTA program.

On-duty or *during service time* means when a VISTA is either performing VISTA service or scheduled to do so.

Project or *VISTA project* means a set of VISTA activities operated and overseen by, and the responsibility of, a sponsor, and assisted under this Part to realize the goals of title I of the DVSA.

Project applicant or *VISTA project applicant* means an entity that submits an application to CNCS to operate, oversee, and be responsible for a VISTA project.

Project application or *VISTA project application* means the application materials prescribed by CNCS to ascertain information on an applying entity's eligibility and suitability to operate, oversee, and be responsible for, a VISTA project.

Project director or *VISTA project director* means a staff person, of legal age, of the sponsor, who has been assigned by the sponsor the overall responsibility for the management of the VISTA project.

Sponsor, VISTA sponsor, or *VISTA project sponsor* means a public agency or private non-profit organization that receives assistance under title I of the DVSA, and is responsible for operating

and overseeing a VISTA project. A public agency may be a federal, state, local or tribal government.

State, when used as a noun, means one of the several states in the United States of America, District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Program Director means a CNCS official who reports to an Area Manager or equivalent CNCS official, and who is the head of a CNCS State Office.

Stipend or *end-of-service stipend* means an end-of-service lump-sum monetary benefit from CNCS that is awarded to certain qualifying VISTAs, who successfully complete an established term of VISTA service.

Subrecipient means a public agency or private non-profit organization that enters into an agreement with a VISTA sponsor to receive one or more VISTAs, and to carry out a set of activities, assisted under this Part, to realize the goals of title I of the DVSA. A public agency may be a federal, state, local or tribal government.

Summer associate means a VISTA member who is enrolled for VISTA service, during a period between May 1 and September 15, and who is also subject to the terms of subpart H of this part. A summer associate must be available to provide continuous full-time service for a period of at least eight weeks and a maximum of ten weeks.

Supervisor or *VISTA Supervisor* means a staff member, of legal age, of the sponsor or a subrecipient, who has been assigned by the sponsor or the subrecipient, the responsibility for the day-to-day oversight of one or more VISTAs.

Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.

VISTA member, *a VISTA*, or *the VISTA* means an individual enrolled full-time for VISTA service in the VISTA program, as authorized under title I of the DVSA.

VISTA program means the Federal government program named Volunteers in Service to America and authorized under title I of the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq*.

VISTA service means VISTA service activities performed by a VISTA member while enrolled in the VISTA program.

§ 2556.7 Are waivers of the regulations in this part allowed?

Upon a determination of good cause, the Chief Executive Officer of CNCS may, subject to statutory limitations, waive any provisions of this part.

Subpart B—VISTA Sponsors

AUTHORITY: 42 U.S.C. 4953(a), (f), 4954(b), (e), 4955(b), 4956, 5043(a)–(c), 5044(a)–(c), (e), 5046, 5052, 5056, and 5057; 42 U.S.C. 12651b (g)(10); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 2156.

§ 2556.100 Which entities are eligible to apply to become VISTA sponsors?

The following entities are eligible to apply to become VISTA sponsors, and thereby undertake projects in the U.S. and certain U.S. territories:

(a) Private nonprofit organization.

(b) Public nonprofit organization.

(c) State government or state government agency.

(d) Local government or local government agency.

(e) Tribal government or tribal government agency.

§ 2556.105 Which entities are prohibited from being VISTA sponsors?

(a) An entity is prohibited from being a VISTA sponsor or from otherwise receiving VISTA assistance if a principal purpose or activity of the entity includes any of the following:

(1) *Electoral activities*. Any activity designed to influence the outcome of elections to any public office, such as actively campaigning for or against, or supporting, candidates for public office; raising, soliciting, or collecting funds for candidates for public office; or preparing, distributing, providing

funds for campaign literature for candidates, including leaflets, pamphlets, and material designed for the print or electronic media.

(2) *Voter registration activities.* Any voter registration activity, such as providing transportation of individuals to voter registration sites; providing assistance to individuals in the process of registering to vote, including determinations of eligibility; or disseminating official voter registration material.

(3) *Transportation to the polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting, or collecting funds for such activities.

(b) Any organization that, subsequent to the receipt of VISTA assistance, makes as one of its principal purposes or activities any of the activities described in paragraph (a) of this section shall be subject to the procedures in §§ 2556.125 through 2556.145.

§ 2556.110 What VISTA assistance is available to a sponsor?

(a) A sponsor may be approved for one or more VISTA positions.

(b) A sponsor, upon review and approval by CNCS to establish a leader position or positions, and in accordance with criteria set forth at subpart G of this part, may be approved for one or more leader positions.

(c) A sponsor, upon approval by CNCS to establish a summer associate position or positions, and in accordance with criteria set forth at subpart F of this part, may be approved for one or more summer associate positions.

(d) A sponsor may be eligible to receive certain grant assistance under the terms determined and prescribed by CNCS.

(e) A sponsor may receive training and technical assistance related to carrying out purposes of title I of the DVSA.

§ 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?

(a) A sponsor is not required to provide a cash match for any of the assistance listed in § 2556.110.

(b) A sponsor must provide supervision, work space, service-related transportation, and any other materials necessary to operate and complete the VISTA project and support the VISTA.

§ 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?

(a) To the maximum extent practicable, the people of the communities to be served by VISTA members shall participate in planning, developing, and implementing programs.

(b) The sponsor shall articulate in its project application how it will engage or continue to engage relevant communities in the development and implementation of programs.

§ 2556.125 May CNCS deny or reduce VISTA assistance to an existing VISTA project?

(a) CNCS may deny or reduce VISTA assistance where a denial or reduction is based on:

(1) Legislative requirement;

(2) Availability of funding;

(3) Failure to comply with applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement;

(4) Ineffective management of CNCS resources;

(5) Substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or applicable Memorandum of Agreement; or

(6) General policy.

(b) In instances where the basis for denial or reduction of VISTA assistance may also be the basis for the suspension or termination of a VISTA project under this subpart, CNCS shall not be limited to the use of this section to the exclusion of the procedures for suspension or termination in this subpart.

§ 2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?

(a) CNCS shall notify the sponsor in writing, at least 75 calendar days before the anticipated denial or reduction of VISTA assistance, that CNCS proposes to deny or reduce VISTA assistance. CNCS's written notice shall state the reasons for the decision to deny or reduce assistance and shall provide an opportunity period for the sponsor to

respond to the merits of the proposed decision. CNCS retains sole authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(b) Where CNCS's notice of proposed decision is based upon a specific charge of the sponsor's failure to comply with the applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement, the notice shall offer the sponsor an opportunity period to respond in writing to the notice, with any affidavits or other supporting documentation, and to request an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such a hearing officer shall be limited to conducting the hearing and offering recommendations to CNCS. Regardless of whether or not an informal hearing takes place, CNCS shall retain full authority to make the final determination whether the VISTA assistance is denied or reduced, as appropriate.

(c) If the recipient requests an informal hearing, in accordance with paragraph (b) of this section, such hearing shall be held at a date specified by CNCS and held at a location convenient to the sponsor.

(d) If CNCS's proposed decision is based on ineffective management of resources, or on the substantial failure to comply with CNCS policy and overall objectives under a contract, grant agreement, or an applicable Memorandum of Agreement, CNCS shall inform the sponsor in the notice of proposed decision of the opportunity to show cause why VISTA assistance should not be denied or reduced, as appropriate. CNCS shall retain full authority to make the final determination whether the VISTA assistance at issue shall be denied or reduced, as appropriate.

(e) The recipient shall be informed of CNCS's final determination on whether the VISTA assistance at issue shall be denied or reduced, and the basis for the determination.

(f) The procedure in this section does not apply to a denial or reduction of VISTA assistance based on legislative requirements, availability of funding, or on general policy.

§ 2556.135 What is suspension and when may CNCS suspend a VISTA project?

(a) Suspension is any action by CNCS temporarily suspending or curtailing assistance, in whole or in part, to all or any part of a VISTA project, prior to the time that the project term is concluded. Suspension does not include the denial or reduction of new or additional VISTA assistance.

(b) In an emergency situation for up to 30 consecutive days, CNCS may suspend assistance to a sponsor, in whole or in part, for the sponsor's material failure or threatened material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement. Such suspension in an emergency situation shall be pursuant to notice and opportunity to show cause why assistance should not be suspended.

(c) To initiate suspension proceedings, CNCS shall notify the sponsor in writing that CNCS is suspending assistance in whole or in part. The written notice shall contain the following:

(1) The grounds for the suspension and the effective date of the commencement of the suspension;

(2) The sponsor's right to submit written material in response to the suspension to show why the VISTA assistance should not be suspended, or should be reinstated, as appropriate; and

(3) The opportunity to adequately correct the deficiency, or deficiencies, which led to CNCS's notice of suspension.

(d) In deciding whether to continue or lift the suspension, as appropriate, CNCS shall consider any timely material presented in writing, any material presented during the course of any informal meeting, as well as any showing that the sponsor has adequately corrected the deficiency which led to the initiation of suspension.

(e) During the period of suspension of a sponsor, no new expenditures, if applicable, shall be made by the sponsor's VISTA project at issue and no new obligations shall be incurred in connection with the VISTA project at issue

except as specifically authorized in writing by CNCS.

(f) CNCS may, in its discretion, modify the terms, conditions, and nature of the suspension or rescind the suspension action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency or deficiencies which led to the suspension and that repetition is not foreseeable.

§ 2556.140 What is termination and when may CNCS terminate a VISTA project?

(a) Termination means any action by CNCS permanently terminating or curtailing assistance to all or any part of a sponsor's VISTA project prior to the time that the project term is concluded.

(b) CNCS may terminate assistance to a sponsor in whole or in part for the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement.

(c) To initiate termination proceedings, CNCS shall notify the sponsor in writing that CNCS is proposing to terminate assistance in whole or in part. The written notice shall contain the following:

(1) A description of the VISTA assistance proposed for termination, the grounds that warrant such proposed termination, and the proposed date of effective termination;

(2) Instructions regarding the sponsor's opportunity, within 21 calendar days from the date of issuance of the notice, to respond in writing to the merits of the proposed termination and instructions regarding the sponsor's right to request a full and fair hearing before a mutually agreed-upon impartial hearing officer; and

(3) Invitation of voluntary action by the sponsor to adequately correct the deficiency or deficiencies which led to CNCS's notice of proposed termination.

(d) In deciding whether to effect termination of VISTA assistance, CNCS shall consider any relevant, timely material presented in writing; any relevant material presented during the course of any full and fair hearing; as well as, any showing that the sponsor has adequately corrected the deficiency which led to the initiation of termination proceedings.

(e) Regardless of whether or not a full and fair hearing takes place, CNCS shall retain all authority to make the final determination as to whether the termination of VISTA assistance is appropriate.

(f) The sponsor shall be informed of CNCS's final determination on the proposed termination of VISTA assistance, and the basis or bases for the determination.

(g) CNCS may, in its discretion, modify the terms, conditions, and nature of a termination action or rescind a termination action at any time on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency which led to the termination, or the initiation of termination proceedings, and that repetition is not threatened.

§ 2556.145 May CNCS pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this subpart?

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

§ 2556.150 What activities are VISTA members not permitted to perform as part of service?

(a) A VISTA may not perform any activities in the project application that do not correspond with the purpose of the VISTA program, as described in § 2556.1, or that the Director has otherwise prohibited.

(b) A VISTA may not perform services or duties as a VISTA member that would otherwise be performed by employed workers or other volunteers (not including participants under the DVSA and the National and Community Service Act of 1990, as amended).

(c) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, that supplant the hiring of or result in the displacement of employed workers or other volunteers (not including participants under the DVSA or the National and Community Service Act of 1990, as amended).

(d) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, which impair existing contracts for service.

(e) The requirements of paragraphs (b) through (d) of this section do not apply when the sponsor requires the service in order to avoid or relieve suffering threatened by, or resulting from, a disaster, civil disturbance, terrorism, or war.

(f) A sponsor or subrecipient shall not request or receive any compensation from a VISTA; from a beneficiary of VISTA project services; or any other source for services of a VISTA.

§ 2556.155 May a sponsor manage a VISTA project through a subrecipient?

(a) A sponsor may carry out a VISTA project through one or more subrecipients that meet the eligibility criteria of § 2556.100.

(b) The sponsor must enter into a subrecipient agreement with each subrecipient. A subrecipient agreement must have at least the following elements:

(1) A project plan to be implemented by the subrecipient;

(2) Records to be kept and reports to be submitted;

(3) Responsibilities of the parties and other program requirements; and

(4) Suspension and termination policies and procedures.

(c) The sponsor retains the responsibility for compliance with a Memorandum of Agreement; the applicable regulations in this Part; and all applicable policies, procedures, and guidance issued by CNCS regarding the VISTA program.

(d) A sponsor shall not request or receive any compensation from a subrecipient for services performed by a VISTA.

(e) A sponsor shall not receive payment from, or on behalf of, the subrecipient for costs of the VISTA assistance, except in two limited circumstances:

(1) For reasonable and actual costs incurred by the sponsor directly related to the subrecipient's participation in a VISTA project; and

(2) For any cost share related to a VISTA placed with the subrecipient in the VISTA project.

§ 2556.160 What are the sponsor's requirements for cost share projects?

(a) A sponsor shall enter into a written agreement for cost share as prescribed by CNCS.

(b) A sponsor shall make timely cost share payments as prescribed by CNCS and applicable federal law and regulations.

(c) In addition to other sources of funds, a sponsor may use funds from federal, state, or local government agencies, provided the requirements of those agencies and their programs are met.

(d) Subject to review and approval by CNCS, CNCS may enter into an agreement with another entity to receive and utilize funds to make cost share payments on behalf of the sponsor.

§ 2556.165 What Fair Labor Standards apply to VISTA sponsors and subrecipients?

All sponsors and subrecipients that employ laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

§ 2556.170 What nondiscrimination requirements apply to sponsors and subrecipients?

(a) An individual with responsibility for the operation of a project that receives CNCS assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or staff member, or on the basis of disability, if the participant or staff member is a qualified individual with a disability.

(b) Any CNCS assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of

1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives CNCS assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with CNCS funds. This provision does not apply to the employment (with CNCS assistance) of any staff member of a CNCS-supported project who was employed with the organization operating the project on the date the CNCS assistance was awarded.

(d) Sponsors must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of race, color, national origin, gender, age, religion, or political affiliation. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, shall discriminate against a VISTA on the basis of disability, if the VISTA is a qualified individual with a disability.

§ 2556.175 What limitations are VISTA sponsors subject to regarding religious activities?

(a) A VISTA shall not give religious instruction, conduct worship services or engage in any form of proselytizing as part of his or her duties.

(b) A sponsor or subrecipient may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use any CNCS assistance, including the services of any VISTA or VISTA assistance, to support any inherently religious activities, such as worship, religious instruction, or proselytizing, as part of the programs or services assisted by the VISTA program. If a VISTA sponsor or subrecipient conducts such inherently religious activities, the activities must be offered separately, in time or location, from the programs or services assisted under this Part by the VISTA program.

Subpart C—VISTA Members

AUTHORITY: 42 U.S.C. 4953(b)(3), (f), 4954(a)–(c), 5044(e).

§ 2556.200 Who may apply to serve as a VISTA?

An individual may apply to serve as a VISTA if all the following requirements are met:

(a) The individual is at least eighteen years of age upon taking an oath or affirmation, as appropriate, to enter VISTA service. There is no upper age limit.

(b) The individual is a United States citizen or national, or is legally residing within a state. For eligibility purposes, a lawful permanent resident alien is considered to be an individual who is legally residing within a state.

§ 2556.205 What commitments and agreements must an individual make to serve in the VISTA program?

(a) To the maximum extent practicable, the individual must make a full-time commitment to remain available for service without regard to regular working hours, at all times during his or her period of service, except for authorized periods of leave.

(b) To the maximum extent practicable, the individual must make a full-time personal commitment to alleviate poverty and poverty-related problems, and to live among and at the economic level of the low-income people served by the project.

(c) The individual's service cannot be used to satisfy service requirements of parole, probation, or community service prescribed by the criminal justice system.

(d) A VISTA candidate or member agrees to undergo an investigation into

his or her criminal history or background as a condition of enrollment, or continued enrollment, in the VISTA program.

§ 2556.210 Who reviews and approves an application for VISTA service?

CNCS has the final authority to approve or deny VISTA applications for VISTA service.

Subpart D—Terms, Protections, and Benefits of VISTA Members

AUTHORITY: 42 U.S.C. 4954(a), (b), (d), 4955, 5044(e), 5055, and 5059; 42 U.S.C. 12602(c).

§ 2556.300 Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?

(a) Except for the purposes listed here, a VISTA is not considered an employee of the Federal Government. A VISTA is considered a Federal employee only for the following purposes:

(1) Federal Tort Claims Act—28 U.S.C. 1346(b); 28 U.S.C. 2671–2680;

(2) Federal Employees' Compensation Act—5 U.S.C. chapter 81, subchapter 1;

(3) Hatch Act—5 U.S.C. chapter 73, subchapter III;

(4) Internal Revenue Service Code—26 U.S.C. 1 *et seq.;* and

(5) Title II of the Social Security Act—42 U.S.C. 401 *et seq*.

(b) A VISTA is not considered a federal employee for any purposes other than those set forth in paragraph (a) of this section.

(c) A VISTA is not covered by Federal or state unemployment compensation related to their enrollment or service in the VISTA program. A VISTA's service is not considered employment for purposes of eligibility for, or receipt of, federal, state, or any other unemployment compensation.

(d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as Federal income tax and Social Security.

(e) A VISTA is not, under any circumstances, considered an employee of the sponsor or subrecipient to which he or she is assigned to serve. No VISTA is in an employment relationship with the sponsor or subrecipient to which he or she is assigned. The sponsor is not authorized to make contributions to any state unemployment compensation fund on a VISTA's behalf.

§ 2556.305 What is the duration and scope of service for a VISTA?

(a) To serve as a VISTA, an individual makes a full-time commitment for a minimum of one year, without regard to regular working hours.

(b) A VISTA carries out activities in accordance with the purpose of the VISTA program, as described in § 2556.1.

(c) To the maximum extent practicable, the VISTA shall live among and at the economic level of the low-income community served by the project, and actively seek opportunities to engage with that low-income community without regard to regular work hours.

(d) A VISTA carries out service activities in conformance with the sponsor's approved project application, including any description of a VISTA assignment as contained in the project application; and, in conformance with the purpose of title I of the DVSA. In any case where there is a conflict between the project application and the DVSA, the DVSA takes precedence.

(e) Under no circumstances may an individual be enrolled to serve as a VISTA beyond five years.

§ 2556.310 What are the lines of supervision or oversight of a VISTA, a VISTA sponsor, and CNCS during a VISTA's term of service?

(a) The VISTA sponsor is responsible for the day-to-day supervision and oversight of the VISTA.

(b) CNCS is responsible for ongoing monitoring and oversight of the VISTA sponsor's project where the VISTA is assigned. CNCS is responsible for selecting the VISTA, assigning the VISTA to a project, removal of a VISTA from a project, and VISTA separation actions such as termination from the VISTA program.

§ 2556.315 What are terms and conditions for official travel for a VISTA?

(a) CNCS may provide official travel for a VISTA candidate or a VISTA, as appropriate, to attend CNCS-directed activities, such as pre-service training, placement at the project site, in-service training events, and return from the project site to home of record.

(b) CNCS must approve all official travel of a VISTA candidate or a VISTA, including the mode of travel.

(c) CNCS may provide for official emergency travel for a VISTA in case of a natural disaster or the critical illness or death of an immediate family member.

§ 2556.320 What benefits may a VISTA receive during VISTA service?

(a) A VISTA receives a living allowance computed on a daily rate. Living allowances vary according to the local cost-of-living in the project area where the VISTA is assigned.

(b) Subject to a maximum amount, and at the discretion and upon approval of CNCS, a VISTA may receive payment for settling-in expenses, as determined by CNCS.

(c) Subject to a maximum amount, and at the discretion of CNCS, in the event of an emergency (such as theft, fire loss, or special clothing necessitated by severe climate), a VISTA may receive an emergency expense payment in order to resume VISTA service activities, as determined and approved by CNCS.

(d) Subject to a maximum amount, and at the discretion of CNCS, a VISTA may receive a baggage allowance for the actual costs of transporting personal effects to the project site to which the VISTA is assigned to serve, as determined by CNCS.

(e) To the extent eligible, a VISTA may receive health care through a health benefits program provided by CNCS.

(f) To the extent eligible, a VISTA may receive child care support through a child care program provided by CNCS.

(g) To the extent eligible, a VISTA may elect to receive a Segal AmeriCorps Education Award, and upon successful completion of service, receive that award in an amount prescribed by CNCS, in accordance with the applicable provisions of 45 CFR parts 2526, 2527, and 2528.

(1) A VISTA is eligible to elect to receive a Segal AmeriCorps Education Award if he or she is a citizen, national, or lawful permanent resident alien of the United States.

(2) A VISTA who elects a Segal AmeriCorps Education Award is eligible to request forbearance of a student loan from his or her loan-holder. A VISTA who elects a Segal AmeriCorps Education Award may, upon successful completion of service, be eligible to receive up to 100 percent of the interest accrued on a qualified student loan, consistent with the applicable provisions of 45 CFR part 2529.

(3) A VISTA is not eligible to receive more than an amount equal to the aggregate value of two full-time Segal AmeriCorps Education Awards in his or her lifetime.

(4) Other than for a summer associate, the amount of a Segal AmeriCorps Education Award for the successful completion of a VISTA term of service is equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the fiscal year in which the VISTA has enrolled in the VISTA program.

(h) A VISTA who does not elect to receive a Segal AmeriCorps Education Award, upon successful completion of service, receives an end-of-service stipend in an amount prescribed by CNCS.

(i) In the event that a VISTA does not successfully complete a full term of service, a VISTA shall not receive a pro-rated Segal AmeriCorps Education Award or a pro-rated end-of-service stipend, except in cases where the appropriate State Program Director determines the VISTA did not successfully complete a full term of service because of a compelling, personal circumstance. Examples of a compelling, personal circumstance are: Serious medical condition or disability of a VISTA during VISTA service; critical illness or disability of a VISTA's immediate family member (spouse, domestic partner, parent, sibling, child,

or guardian) if this event makes completing a term of service unreasonably difficult; or unusual conditions not attributable to the VISTA, such as natural disaster, strike, or premature closing of a project, that make completing a term unreasonably difficult or infeasible.

(j) In the event of a VISTA's death during service, his or her family or others that he or she named as beneficiary in accordance with section 5582 of title 5, United States Code, shall be paid a pro-rated end-of-service stipend for the period during which the VISTA served. If the VISTA had elected to receive the Segal AmeriCorps Education Award for successful completion of a full term of VISTA service, prior to payment to the named beneficiary, CNCS shall convert that election to an end-of-service stipend and pay the VISTA's family, or others that he or she named as beneficiary, a pro-rated end-of-service stipend accordingly.

§ 2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?

Under certain circumstances, as set forth in §§ 2556.330 through 2556.335, CNCS may pay reasonable legal defense expenses incurred in judicial or administrative proceedings for the defense of a VISTA serving in the VISTA program. Such covered legal expenses consist of counsel fees, court costs, bail, and other expenses incidental to a VISTA's legal defense.

§ 2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?

(a) For the legal defense of a VISTA member who is charged with a criminal offense related to the VISTA member's service, up to and including arraignment in Federal, state, and local criminal proceedings, CNCS may pay actual and reasonable legal expenses. CNCS is not required to pay any expenses for the legal defense of a VISTA member where he or she is charged with a criminal offense arising from alleged activity or action that is unrelated to that VISTA's service.

(b) A VISTA member's service is clearly unrelated to a charged offense:

(1) When the activity or action is alleged to have occurred prior to the VISTA member's VISTA service.

(2) When the VISTA member is not at his or her assigned project location, such as during periods of approved leave, medical leave, emergency leave, or in administrative hold status in the VISTA program.

(3) When the activity or action is alleged to have occurred at or near his or her assigned project, but is clearly not part of, or required by, the VISTA member's service assignment.

(c) For the legal defense, beyond arraignment in Federal, state, and local criminal proceedings, of a VISTA member who is charged with a criminal offense, CNCS may also pay actual and reasonable legal expenses:

(1) When the charged offense against the VISTA member relates exclusively to his or her VISTA assignment or status as a VISTA member;

(2) When the charge offense against the VISTA member arises from an alleged activity or action that is a part of, or required by, the VISTA member's VISTA assignment;

(3) When the VISTA member has not admitted a willful or knowing violation of law; or

(4) When the charged offense against the VISTA member is not a minor offense or misdemeanor, such as a minor vehicle violation.

(d) Notwithstanding paragraphs (a) through (c) of this section, there may be situations in which the criminal proceedings at issue arise from a matter that also gives rise to a civil claim under the Federal Tort Claims Act. In such a situation, the U.S. Department of Justice may, on behalf of the United States, agree to defend the VISTA. If the U.S. Department of Justice agrees to defend the VISTA member, unless there is a conflict between the VISTA member's interest and that of the United States, CNCS will not pay for expenses associated with any additional legal representation (such as counsel fees for private counsel) for the VISTA member.

§ 2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?

For the legal defense in Federal, state, and local civil judicial and administrative proceedings of a VISTA member, CNCS may also pay actual and reasonable legal expenses, where:

(a) The complaint or charge is against the VISTA, and is directly related to his or her VISTA service and not to his or her personal activities or obligations;

(b) The VISTA has not admitted to willfully or knowingly pursuing a course of conduct that would result in the plaintiff or complainant initiating such a proceeding; and

(c) The judgment sought involves a monetary award that exceeds $1,000.

§ 2556.340 What is non-competitive eligibility and who is eligible for it?

(a) Non-competitive eligibility is a status attained by an individual such that the individual is eligible for appointment by a Federal agency in the Executive branch, into a civil service position in the federal competitive service, in accordance with 5 CFR 315.605.

(b) An individual who successfully completes at least a year-long term of service as a VISTA, and who has not been terminated for cause from the VISTA program at any time, retains non-competitive eligibility status for one year following the end of the term of service as a VISTA.

(c) In addition to the retention of the one year of non-competitive eligibility status as provided in paragraph (b) of this section, an individual's non-competitive eligibility status may extend for two more years to a total of three years if the individual is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the view of the federal agency referenced in paragraph (a) of this section, warrants extension.

§ 2556.345 Who may present a grievance?

(a) Under the VISTA program grievance procedure, a grievance may be presented by any individual who is currently enrolled as a VISTA in the VISTA program or who was enrolled as a VISTA in the VISTA program within the past 30 calendar days.

(b) A VISTA's grievance shall not be construed as reflecting on the VISTA's standing, performance, or desirability as a VISTA.

(c) A VISTA who presents a grievance shall not be subjected to restraint, interference, coercion, discrimination, or reprisal because of presentation of views.

§ 2556.350 What matters are considered grievances?

(a) Under the VISTA program grievance procedure, grievances are matters of concern, brought by a VISTA, that arise out of, and directly affect, the VISTA's service situation or that arise out of a violation of a policy, practice, or regulation governing the terms or conditions of the VISTA's service, such that the violation results in the denial or infringement of a right or benefit to the VISTA member.

(b) Matters not within the definition of a grievance as defined in paragraph (a) of this section are not grievable, and therefore, are excluded from the VISTA program grievance procedure. Though not exhaustive, examples of matters excluded from the VISTA program grievance procedure are:

(1) Those matters related to a sponsor's or project's continuance or discontinuance; the number of VISTAs assigned to a VISTA project; the increases or decreases in the level of support provided to a VISTA project; the suspension or termination of a VISTA project; or the selection or retention of VISTA project staff.

(2) Those matters for which a separate administrative procedure or complaint process is provided, such as early termination for cause, claims of discrimination during service, and federal worker's compensation claims filed for illness or injury sustained in the course of carrying out VISTA activities.

(3) Those matters related to any law, published rule, regulation, policy, or procedure.

(4) Those matters related to housing during a VISTA member's service.

(5) Those matters which are, by law, subject to final administrative review outside CNCS.

(6) Those matters related to actions taken, or not taken, by a VISTA sponsor or subrecipient, or CNCS, in compliance with or in order to fulfill the terms of a contract, grant, or other agreement related to the VISTA program.

(7) Those matters related to the internal management of CNCS, unless such matters are shown to specifically and directly affect the VISTA's service situation or terms or conditions of his or her VISTA service.

§ 2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?

(a) A VISTA is entitled to review any material in his or her official VISTA file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of materials that may be withheld include references obtained under pledge of confidentiality, official VISTA files of other VISTAs, and privileged intra-agency documents.

(b) A VISTA may review relevant materials in the possession of a sponsor to the extent such materials are disclosable by the sponsor under applicable freedom of information act and privacy laws.

§ 2556.360 How may a VISTA bring a grievance?

(a) *Bringing a grievance—Step 1.* (1) While currently enrolled in the VISTA program, or enrolled in the VISTA program within the past 30 calendar days, a VISTA may bring a grievance to the sponsor or subrecipient where he or she is assigned to serve within 15 calendar days that the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event. If the grievance arises out of a continuing condition or practice that individually affects a VISTA, while enrolled the VISTA may bring it at any time while he or she is affected by a continuing condition or practice.

(2) A VISTA brings a grievance by presenting it in writing to the executive director, or comparable individual, of the sponsoring organization where the VISTA is assigned, or to the sponsor's representative who is designated to receive grievances from a VISTA.

(3) The sponsor shall review and respond in writing to the VISTA's grievance, within 10 calendar days of receipt of the written grievance. The sponsor may not fail to respond to a complaint raised by a VISTA on the basis that it is not an actual grievance, or that it is excluded from coverage as a grievance, but may, in the written response, dismiss the complaint and refuse to grant the relief requested on either of those grounds.

(4) If the grievance brought by a VISTA involves a matter over which the sponsor has no substantial control or if the sponsor's representative is the supervisor of the VISTA, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and present the grievance in writing directly to the State Program Director, as described in paragraph (b) of this section.

(b) *Bringing a grievance—Step 2.* (1) If, after a VISTA brings a grievance as set forth in paragraphs (a)(1) and (2) of this section, the matter is not resolved, he or she may submit the grievance in writing to the appropriate State Program Director. The VISTA must submit the grievance to the State Program Director either:

(i) Within seven calendar days of receipt of the response of the sponsor; or,

(ii) In the event the sponsor has not issued a response to the VISTA within 10 calendar days of receipt of the written grievance, within 17 calendar days.

(2) If the grievance involves a matter over which either the sponsor or subrecipient has no substantial control or if the sponsor's representative is the supervisor of the VISTA, as described in paragraph (a)(4) of this section, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and submit the grievance in writing directly to the State Program Director. In such a case, the VISTA must submit the grievance to the State Program Director within 15 calendar days of the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event.

(3) Within ten working days of receipt of the grievance, the State Program Director shall respond in writing, regardless of whether or not the matter constitutes a grievance as defined under this grievance procedure, and/or is timely submitted. In the response, the State Program Director may determine that the matter submitted as a grievance is not grievable, is not considered a grievance, or fails to meet the time limit for response. If the State Program Director makes any such determination, he or she may dismiss the complaint, setting forth the reason(s) for the dismissal. In such a case, the State Program Director need not address the complaint on the merits, nor make a determination of the complaint on the merits.

§ 2556.365 May a VISTA appeal a grievance?

(a) The VISTA may appeal in writing to the appropriate Area Manager the response of the State Program Director to the grievance, as set forth in § 2556.360(b)(3). To be eligible to appeal a grievance response to the Area Manager, the VISTA must have exhausted all appropriate actions as set forth in § 2556.360.

(b) A VISTA's grievance appeal must be in writing and contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the VISTA.

(c) The VISTA must submit a grievance appeal to the appropriate Area Manager no later than 10 calendar days after the State Program Director issues his or her response to the grievance.

(d) Certain matters contained in a grievance appeal may be rejected, rather than denied on the merits, by the Area Manager. A grievance appeal may be rejected, in whole or in part, for any of the following reasons:

(1) The grievance appeal was not submitted to the appropriate Area Manager within the time limit specified in paragraph (c) of this section;

(2) The grievance appeal consists of matters not contained within the definition of a grievance, as specified in section § 2556.350(a);

(3) The grievance appeal consists of matters excluded from the VISTA program grievance procedure, as specified in § 2556.350(b); or

(4) The grievance appeal contains matters that are moot, or for which relief has otherwise been granted.

(e) Within 14 calendar days of receipt of the grievance, the appropriate Area Manager shall decide the grievance appeal on the merits, or reject the grievance appeal in whole or in part, or both, as appropriate. The Area Manager shall notify the VISTA in writing of the decision and specify the grounds for the appeal decision. The appeal decision shall include a statement of the basis for the decision and is a final decision of CNCS.

Subpart E—Termination for Cause Procedures

AUTHORITY: 42 U.S.C. 4953(b), (c), (f), and 5044(e).

§ 2556.400 What is termination for cause and what are the criteria for termination for cause?

(a) Termination for cause is discharge of a VISTA from the VISTA program due to a deficiency, or deficiencies, in conduct or performance.

(b) CNCS may terminate for cause a VISTA for any of the following reasons:

(1) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(2) Violation of any provision of the Domestic Service Volunteer Act of 1973, as amended, or any CNCS or VISTA program policy, regulation, or instruction;

(3) Failure, refusal, or inability to perform prescribed project duties as outlined in the project plan, assignment description, or as directed by the sponsor to which the VISTA is assigned;

(4) Involvement in activities which substantially interfere with the VISTA's performance of project duties;

(5) Intentional false statement, misrepresentation, omission, fraud, or deception in seeking to obtain selection as a VISTA in the VISTA program;

(6) Any conduct on the part of the VISTA which substantially diminishes his or her effectiveness as a VISTA; or

(7) Unsatisfactory performance of an assignment.

§ 2556.405 Who has sole authority to remove a VISTA from a VISTA project and who has sole authority to terminate a VISTA from the VISTA program?

(a) CNCS has the sole authority to remove a VISTA from a project where he or she has been assigned.

(b) CNCS has the sole authority to terminate for cause, or otherwise terminate, a VISTA from the VISTA program.

(c) Neither the sponsoring organization nor any of its subrecipients has the authority to remove a VISTA from a project or to terminate a VISTA for cause, or for any other basis, from the VISTA program.

§ 2556.410 May a sponsor request that a VISTA be removed from its project?

(a) The head of a sponsoring organization, or his or her designee, may request that CNCS remove a VISTA assigned to its project. Any such request must be submitted in writing to the appropriate State Program Director and should state the reasons for the request.

(b) The State Program Director may, at his or her discretion, attempt to resolve the situation with the sponsor so that an alternative solution other than removal of the VISTA from the project assignment is reached.

(c) When an alternative solution, as referenced in paragraph (b) of this section, is not sought, or is not reached within a reasonable time period, the State Program Director shall remove the VISTA from the project.

§ 2556.415 May CNCS remove a VISTA from a project without the sponsor's request for removal?

Of its own accord, CNCS may remove a VISTA from a project assignment without the sponsor's request for removal.

§ 2556.420 What are termination for cause proceedings?

(a) Termination for cause proceedings are initiated by the State Program Director when CNCS removes a VISTA from a project assignment due to an alleged deficiency, or alleged deficiencies, in conduct or performance.

(b) The State Program Director or other CNCS State Office staff, to the extent practicable, communicates the matter with the VISTA who is removed from a VISTA project and the administrative procedures as set forth in paragraphs (c) through (e) of this section.

(c) The State Program Director shall notify VISTA in writing of CNCS's proposal to terminate for cause. The written proposal to terminate him or her for cause must give the VISTA the reason(s) for the proposed termination, and notify him or her that he or she has 10 calendar days within which to answer in writing the proposal to terminate him or her for cause, and to furnish any accompanying statements or written material. The VISTA must submit any answer to the appropriate State Program Director identified in the written proposal to terminate for cause within the deadline specified in the proposal to terminate for cause.

(d) Within 10 calendar days of the expiration of the VISTA's deadline to answer the proposal to terminate for cause, the appropriate State Program Director shall issue a written decision regarding the proposal to terminate for cause.

(1) If the decision is to terminate the VISTA for cause, the decision shall set forth the reasons for the determination and the effective date of termination (which may be on or after the date of the decision).

(2) If the decision is not to terminate the VISTA for cause, the decision shall indicate that the proposal to terminate for cause is rescinded.

(e) A VISTA who does not submit a timely answer to the appropriate State Program Director, as set forth in paragraph (c) of this section, is not entitled to appeal the decision regarding the proposal to terminate for cause. In such cases, CNCS may terminate the VISTA for cause, on the date identified in the decision, and the termination action is final.

§ 2556.425 May a VISTA appeal his or her termination for cause?

(a) Within 10 calendar days of the appropriate State Program Director's issuance of the decision to terminate

the VISTA for cause, as set forth in § 2556.420(d), the VISTA may appeal the decision to the appropriate Area Manager. The appeal must be in writing and specify the reasons for the VISTA's disagreement with the decision.

(b) CNCS shall not incur any expenses or travel allowances for the VISTA in connection with the preparation or presentation of the appeal.

(c) The VISTA may have access to records as follows:

(1) The VISTA may review any material in the VISTA's official CNCS file and any relevant CNCS records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of documents that may be withheld include references obtained under pledge of confidentiality, official files of other program participants, and privileged intra-agency documents.

(2) The VISTA may review relevant records in the possession of a sponsor to the extent such documents are disclosable by the sponsor under applicable freedom of information act and privacy laws.

(d) Within 14 calendar days of receipt of any appeal by the VISTA, the Area Manager or equivalent CNCS official shall issue a written appeal determination. The appeal determination shall indicate the reasons for such an appeal determination. The appeal determination shall be final.

§ 2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?

(a) Only a VISTA whose early termination from the VISTA program is for cause, and who has answered the proposal to terminate him or her for cause in a timely manner, as set forth in § 2556.420(c), is entitled to appeal the early termination action, as referenced in § 2556.425. A termination for cause is based on a deficiency, or deficiencies, in the performance or conduct of a VISTA.

(b) The following types of early terminations from the VISTA program are not terminations for cause, and are not entitled to appeal under the early termination appeal procedure set forth in §§ 2556.420 and 2556.425:

(1) Resignation from the VISTA program prior to the issuance of a decision to terminate for cause, as set forth in § 2556.420(d);

(2) Early termination from the VISTA program because a VISTA did not secure a suitable reassignment to another project; and

(3) Medical termination from the VISTA program.

Subpart F—Summer Associates

AUTHORITY: 42 U.S.C. 4954(d), (e).

§ 2556.500 How is a position for a summer associate established in a project?

(a) From time-to-time, the State Program Director invites sponsors within the state to apply for one or more positions for individuals to serve as summer associates at the sponsor's VISTA project.

(b) Subject to VISTA assistance availability, CNCS approves the establishment of summer associate positions based on the following factors:

(1) The need in the community, as demonstrated by the sponsor, for the performance of project activities by a summer associate(s);

(2) The content and quality of summer associate project plans;

(3) The capacity of the sponsor to implement the summer associate project activities; and

(4) The sponsor's compliance with all applicable parts of the DVSA, VISTA program policy, and the sponsor's Memorandum of Agreement, which incorporates their project application.

§ 2556.505 How do summer associates differ from other VISTAs?

Summer associates differ from other VISTAs in the following ways:

(a) Summer associates are not eligible to receive:

(1) Health care through a health benefits program provided by CNCS;

(2) Child care support through a child care program provided by CNCS;

(3) Payment for settling-in expenses; or

(4) Non-competitive eligibility in accordance with 5 CFR 315.605.

(b) Absent extraordinary circumstances, summer associates are not eligible to receive:

(1) Payment for travel expenses incurred for travel to or from the project site to which the summer associate is assigned; or

(2) A baggage allowance for the costs of transporting personal effects to or from the project site to which the summer associate is assigned to serve.

(c) CNCS may discharge a summer associate due to a deficiency, or deficiencies, in conduct or performance. Summer associates are not subject to subpart E of this part, or to the grievance procedures provided to VISTAs set forth in §§ 2556.345 through 2556.365.

Subpart G—VISTA Leaders

AUTHORITY: 42 U.S.C. 4954(b).

§ 2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?

(a) At its discretion, CNCS may approve the establishment of a leader position based on the following factors:

(1) The need for a leader in a project of a substantial size and with multiple VISTAs assigned to serve at that project, or the need for leader for multiple projects located within a contiguous geographic region.

(2) The need for a leader to assist with the communication of VISTA policies and administrative procedures to VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(3) The need for a leader to assist with the professional development of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(4) The need for a leader to assist with the recruitment and preparation for the arrival of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(5) The capacity of the VISTA supervisor to support and guide the leader.

(b) A sponsor may request, in its project application, that CNCS establish a leader position in its project.

§ 2556.605 Who is eligible to apply to serve as a leader?

An individual is eligible to apply to serve as a leader if he or she has successfully completed any of the following:

(a) At least one year of service as a VISTA;

(b) At least one full term of service as a full-time AmeriCorps State and National member;

(c) At least one full term of service as a member of the AmeriCorps National Civilian Community Corps (NCCC); or

(d) At least one traditional term of service as a Peace Corps Volunteer.

§ 2556.610 What is the application process to apply to become a leader?

(a) *Application package.* An eligible individual must apply in writing to CNCS to become a leader. The sponsor's recommendation and related materials, described in paragraph (b) of this section, must be included with the individual's application to become a leader.

(b) *Sponsor recommendation.* A sponsor where an individual is seeking to serve as a leader must recommend in writing to CNCS the individual to become a leader. Included with the recommendation must be an evaluation of the individual's performance while in previous service, a description of specific tasks, responsibilities, qualifications, and other relevant information that justifies the placement of the individual in a leader position, and if appropriate, the establishment of a leader position.

(c) *Selection.* CNCS shall have sole authority to select a leader. The criteria for selection shall include consideration of the individual's application and the sponsor's recommendation described in paragraph (b) of this section.

§ 2556.615 Who reviews a leader application and who approves or disapproves a leader application?

CNCS reviews the application package for the leader position, considers the recommendation of the sponsor,

and approves or disapproves the individual to serve as a leader.

§ 2556.620 How does a leader differ from other VISTAs?

The application process to apply to become a leader, as described in § 2556.610, is separate and distinct from the application process to apply to enroll as a VISTA in the VISTA program:

(a) A leader may receive a living allowance computed at a higher daily rate than other VISTAs, as authorized under section 105(a)(1)(B) of the DVSA.

(b) A leader is subject to all the terms and conditions of service described in § 2556.625.

§ 2556.625 What are terms and conditions of service for a leader?

Though not exhaustive, terms and conditions of service as a leader include:

(a) A leader makes a full-time commitment to serve as a leader, without regard to regular working hours, for a minimum of one year.

(b) To the maximum extent practicable, a leader shall live among and at the economic level of the low-income community served by the project and actively seek opportunities to engage with that low-income community.

(c) A leader aids the communication of VISTA policies and administrative procedures to VISTAs.

(d) A leader assists with the leadership development of VISTAs.

(e) A leader is a resource in the development and delivery of training for VISTAs.

(f) A leader may assist the sponsor with recruitment and preparation for the arrival of VISTAs.

(g) A leader may advise a supervisor on potential problem areas and needs of VISTAs.

(h) A leader aids VISTAs in the development of effective working relationships and understanding of VISTA program concepts.

(i) A leader may aid the supervisor and sponsor in directing or focusing the VISTA project to best address the community's needs.

(j) A leader may serve as a collector of data for performance measures of the project and the VISTAs.

(k) A leader is prohibited from supervising VISTAs. A leader is also prohibited from handling or managing, on behalf of the project, personnel-related matters affecting VISTAs. Personnel-related matters affecting VISTAs must be managed and handled by the project and in coordination with the appropriate CNCS State Office.

Subpart H—Restrictions and Prohibitions on Political Activities and Lobbying

AUTHORITY: 42 U.S.C. 4954(a), 5043, and 5055(b).

§ 2556.700 Who is covered by this subpart?

(a) All VISTAs, including leaders and summer associates, are subject to this subpart.

(b) All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA grant assistance are subject to this subpart.

(c) All VISTA sponsors and subrecipients are subject to this subpart.

§ 2556.705 What is prohibited political activity?

For purposes of the regulations in this subpart, ''prohibited political activity'' means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

§ 2556.710 What political activities are VISTAs prohibited from engaging in?

(a) A VISTA may not use his or her official authority or influence to interfere with or affect the result of an election.

(b) A VISTA may not use his or her official authority or influence to coerce any individual to participate in political activity.

(c) A VISTA may not use his or her official VISTA program title while participating in prohibited political activity.

(d) A VISTA may not participate in prohibited political activities in the following circumstances:

(1) While he or she is on duty;

(2) While he or she is wearing an article of clothing, logo, insignia, or other similar item that identifies CNCS, the VISTA program, or one of CNCS's other national service programs;

(3) While he or she is in any room or building occupied in the discharge of VISTA duties by an individual employed by the sponsor; and

(4) While using a vehicle owned or leased by a sponsor or subrecipient, or while using a privately-owned vehicle in the discharge of VISTA duties.

§ 2556.715 What political activities may a VISTA participate in?

(a) Provided that paragraph (b) of this section is fully adhered to, a VISTA may:

(1) Express his or her opinion privately and publicly on political subjects;

(2) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of similar character;

(3) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; and

(4) Participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as a VISTA, or compromise the neutrality, efficiency, or integrity of CNCS or the VISTA program.

(b) A VISTA may participate in political activities set forth in paragraph (a) of this section as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with his or her provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.720 May VISTAs participate in political organizations?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Be a member of a political party or other political group and participate in its activities;

(2) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;

(3) Attend and participate fully in the business of nominating caucuses of political parties;

(4) Organize or reorganize a political party organization or political group;

(5) Participate in a political convention, rally, or other political gathering; and

(6) Serve as a delegate, alternate, or proxy to a political party convention.

(b) A VISTA may participate in a political organization as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.725 May VISTAs participate in political campaigns?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the prohibitions set forth in § 2556.710;

(2) Initiate or circulate a nominating petition for a candidate for partisan political office;

(3) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(4) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material; and

(5) Address a convention caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office.

(b) A VISTA may participate in a political campaign as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.730 May VISTAs participate in elections?

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Register and vote in any election;

(2) Act as recorder, watcher, challenger, or similar officer at polling places;

(3) Serve as an election judge or clerk, or in a similar position; and

(4) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

(5) Participate in voter registration activities.

(b) A VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

§ 2556.735 May a VISTA be a candidate for public office?

(a) Except as provided in paragraph (c) of this section, no VISTA may run for the nomination to, or as a candidate for election to, partisan political office.

(b) In accordance with the prohibitions set forth in § 2556.710, a VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interference with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) Provided that paragraphs (a) and (b) of this section are adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Run as an independent candidate in a partisan election in designated U.S. municipalities and political subdivisions as set forth at 5 CFR part 733; and

(2) Run as a candidate in a non-partisan election.

§ 2556.740 May VISTAs participate in political fundraising activities?

(a) Provided that paragraphs (b) through (d) of this section are fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election;

(2) Attend a political fundraiser; and

(3) Solicit, accept, or receive uncompensated volunteer services for a political campaign from any individual.

(b) A VISTA may participate in fundraising activities as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, his or her assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Is not conducted in a manner involving the use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) A VISTA may not knowingly:

(1) Personally solicit, accept, or receive a political contribution from another individual;

(2) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(3) Allow his or her perceived or actual affiliation with the VISTA program, or his or her official title as a VISTA, to be used in connection with fundraising activities; or

(4) Solicit, accept, or receive uncompensated individual volunteer services from a subordinate, (e.g., a leader may not solicit, accept or receive a political contribution from a VISTA).

(d) Except for VISTAs who reside in municipalities or political subdivisions designated under 5 CFR part 733, no VISTA may accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

§ 2556.745 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?

(a) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before CNCS or the VISTA program.

(b) A VISTA may not knowingly solicit or discourage the participation of any political activity of any individual who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by or through CNCS or the VISTA program.

§ 2556.750 What restrictions and prohibitions are VISTAs subject to who campaign for a spouse or family member?

A VISTA who is the spouse or family member of either a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election, is subject to the same restrictions and prohibitions as other VISTAs, as set forth in § 2556.725.

§ 2556.755 May VISTAs participate in lawful demonstrations?

In accordance with the prohibitions set forth in § 2556.710, VISTAs may participate in lawful demonstrations, political rallies, and other political meetings, so long as such participation is in conformance with all of the following:

(a) Occurs only while on authorized leave or while otherwise off duty;

(b) Does not include attempting to represent, or representing the views of VISTAs or the VISTA program on any public issue;

(c) Could not be reasonably understood by the community as being identified with the VISTA program, the project, or other elements of VISTA service; and

(d) Does not interfere with the discharge of VISTA duties.

§ 2556.760 May a sponsor and subrecipient approve the participation of a VISTA in a demonstration or other political meeting?

(a) No VISTA sponsor or subrecipient shall approve a VISTA to be involved in planning, initiating, participating in, or otherwise aiding or assisting in any demonstration or other political meeting.

(b) If a VISTA sponsor or subrecipient which, subsequent to the receipt of any CNCS financial assistance, including the assignment of VISTAs, approves the participation of a VISTA in a demonstration or other political meeting, shall be subject to procedures related to the suspension or termination of such assistance, as provided in subpart B of this part, §§ 2556.135 through 2556.140.

§ 2556.765 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?

Violations by a VISTA of any of the prohibitions or restrictions set forth in this subpart may warrant termination for cause, in accordance with proceedings set forth at §§ 2556.420, 2556.425, and 2556.430.

§ 2556.770 What are the requirements of VISTA sponsors and subrecipients regarding political activities?

(a) All sponsors and subrecipients are required to:

(1) Understand the restrictions and prohibitions on the political activities of VISTAs, as set forth in this subpart;

(2) Provide training to VISTAs on all applicable restrictions and prohibitions on political activities, as set forth in this subpart, and use training materials that are consistent with these restrictions and prohibitions;

(3) Monitor on a continuing basis the activity of VISTAs for compliance with this subpart; and

(4) Report all violations, or questionable situations, immediately to the appropriate CNCS State Office.

(b) Failure of a sponsor to comply with the requirements of this subpart, or a violation of the requirements contained in this subpart by the sponsor or subrecipient, sponsor or subrecipient's covered employees, agents, or VISTAs, may be deemed to be a material failure to comply with terms or conditions of the VISTA program. In such a case, the sponsor shall be subject to procedures related to the denial or reduction, or suspension or termination, of such assistance, as provided in §§ 2556.125, 2556.130, and 2556.140.

§ 2556.775 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors and subrecipients?

All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA funds are subject to all applicable prohibitions and restrictions described in this subpart in the following circumstances:

(a) Whenever they are engaged in an activity that is supported by CNCS or VISTA funds or assistance; and

(b) Whenever they identify themselves as acting in their capacity as an official of a VISTA project that receives CNCS or VISTA funds or assistance, or could reasonably be perceived by others as acting in such a capacity.

§ 2556.780 What prohibitions on lobbying activities apply to VISTA sponsors and subrecipients?

(a) No VISTA sponsor or subrecipient shall assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.

(b) No VISTA sponsor or subrecipient shall use any CNCS financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

PARTS 2557–2599 [RESERVED]

FINDING AIDS

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All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the FEDERAL REGISTER since January 1, 2011 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.

For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.fdsys.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.fdsys.gov*.

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1611 Appendix A revised 4550
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2553.100—2553.109 (Subpart J) Added 20247

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1355.21 Heading, (a) and (b) revised; (c) amended; interim 926
1355.30 Introductory text, (c), (d), (i), (k), (m), (n) heading, (1) through (4) and (o) revised; interim 926
1355.31 Revised; interim 926

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1355.33 (a)(2) introductory text, (i), (ii), (iv), (b), (c)(1), (2), (3), (4)(iv), (d) and (f) revised; (c)(6) and (e) amended; interim 927
1355.34 (a) introductory text, (1), (3), (b)(1) introductory text, (2) introductory text, (i), (ii)(C) through (F), (3) introductory text, (i), (4), (c) heading, introductory text, (1), (2) introductory text, (i) through (v), (3) introductory text, (i), (4) introductory text, (i), (iv), (v), (5) introductory text, (v), (6)(i), (iv), (7)(i) though (v) and (d) revised; (b)(3)(ii) amended; interim 928
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1355.54 Revised; interim 934

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1355 Appendices A through E revised; Appendix F removed; interim 934

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