

amount of time off from assignment to present the appeal.

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

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

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

§ 1210.3-6 Appeal of termination.

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

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

§ 1210.3-7 Inquiry by Hearing Examiner.

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

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

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

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

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

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

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

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

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

§ 1210.3-8

45 CFR Ch. XII (10-1-00 Edition)

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

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

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

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

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

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

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

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

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

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

(2) If the hearing is not reported verbatim, a suitable summary of pertinent

portions of the testimony shall be made part of the record of proceedings. When agreed to in writing, the summary constitutes the report of the hearing. If the Examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary will constitute the report of the hearing and shall be made part of the record of proceedings.

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

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

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

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

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

§ 1210.3-9 Decision by Director of VISTA.

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