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A COMPILATION OF AMENDMENTS TO PUBLIC LAW 93-113

THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973

The text of Titles I through VII and the Table of Contents of this compilation include all amendments made to Public Law 93-113 through July 25, 1991 (P.L. 102-73)

OFFICE OF THE DIRECTOR
ACTION
WASHINGTON D C 20525

Jack
This is reauthorization material.
With this and ACTION comments to "Discussion Outline", John + I would appreciate a meeting with you this week. Thx.
— Judy H

"As of 1/92"

DOMESTIC VOLUNTEER SERVICE ACT OF 1973, AS AMENDED
PUBLIC LAW 93-113

TITLE V--AUTHORIZATION OF APPROPRIATIONS

TITLE VI--AMENDMENTS TO OTHER LAWS AND REPEALERS

TITLE VII--YOUTHBUILD PROJECTS

VOLUNTEERISM POLICY

42 U.S.C. §4950 Sec. 2. (a) Because of the long-standing importance of volunteerism throughout American history, it is the policy of the Congress to foster the tradition of volunteerism through greater involvement on the part of both young and older citizens.

(b) The purpose of ACTION, the Federal domestic volunteer agency, is to foster and expand voluntary citizen service in communities throughout the Nation in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly. In carrying out this purpose, ACTION shall utilize to the fullest extent the programs authorized under this Act, coordinate with other Federal, State, and local agencies and utilize the energy, innovative spirit, experience, and skills of all Americans.

TITLE I -- NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

Part A - VOLUNTEERS IN SERVICE TO AMERICA

CONGRESSIONAL STATEMENT OF PURPOSE

42 U.S.C. §4951 Sec. 101. This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.

AUTHORITY TO OPERATE VISTA PROGRAM

42 U.S.C §4952 Sec. 102. The Director may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purpose of this part.

SELECTION AND ASSIGNMENT OF VOLUNTEERS

42 U.S.C. §4953

Sec. 103. (a) The Director, on the receipt of applications by a public or nonprofit private organizations to receive volunteers under this part, may assign volunteers selected under subsection (b) of this section to work in appropriate projects and programs sponsored by such organizations, including work --

(1) in meeting the health, education, welfare, or related needs of Indians living on reservations or Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps;

(3) in addressing the problems of the homeless, the jobless, the hungry, illiterate or functionally illiterate youth and other individuals, and low-income youths;

(4) in addressing the special needs connected with alcohol and drug abuse prevention, education, and related activities, consistent with the purpose of this part;

(5) in addressing significant health care problems, including chronic and life-threatening illnesses and health care for homeless individuals (especially homeless children) through prevention, treatment, and community-based care activities; and

(6) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this Act or the Community Service Block Grant Act [42 U.S.C. §9901 et seq.], titles VIII and X of the Economic Opportunity Act of 1964 [42 U.S.C. §2991 et seq., 2996 et seq.], the Headstart Act [42 U.S.C. §9831 et seq.], or the Community Economic Development Act of 1981 [42 U.S.C. §9801 et seq.] in furtherance of the purpose of this title.

(b)(1) The Director shall establish recruitment and placement procedures that offer opportunities for both local and national placement of volunteers for service under this part.

(2)(A) The Director shall establish and maintain within the national headquarters of the ACTION Agency a volunteer placement office. The office shall be headed by an individual designated by the Director to be the national Administrator of Recruitment and Placement, who shall be responsible for carrying out the functions described in this subsection and subsection (c) and all other functions delegated by the Director relating to the recruitment and placement of volunteers under this part.

(B) Such volunteer placement office shall develop, operate, and maintain a current and comprehensive central information system that shall, on request, promptly provide information --

(i) to individuals, with respect to specific oppportunities for service as a volunteer with approved projects or programs to which no volunteer has been assigned; and

(ii) to approved projects or programs, with respect to the availability of individuals whose applications for service as a volunteer have been approved and who are awaiting an assignment with a specific project or program.

(C) The Director shall, at a minimum, designate one employee of the ACTION Agency in each region of the United States whose primary duties and responsibilities shall be to assist the Administrator in carrying out the functions described in this subsection and subsection (c).

(D) The Director shall assign or hire as necessary, such additional national, regional, and State personnel to carry out the functions described in this subsection and subsection (c) as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Director shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers under this part and to individuals who have specialized experience in the recruitment of volunteers.

(3) Volunteers shall be selected from among qualified individuals submitting an application for such service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for such service and to determine, in accordance with paragraph (7), the most appropriate assignment for each such volunteer. The Director shall approve the application of each individual who applies in conformance with this subsection and who, on the basis of the information provided in the application, is determined by the Director to be qualified to serve as a volunteer under this part.

(4) Each application for service as a volunteer under this part shall --

(A) indicate the period of time during which the applicant is available to serve as a volunteer under this part;

(B) describe the previous education, training, military and work experience, and any other relevant skills or interests of the applicant;

(C) specify the State or geographic region in which the applicant prefers to be assigned; and

(D) specify--

(i) the type of project or program to which the applicant prefers to be assigned; or

(ii) the particular project or program to which the applicant prefers to be assigned.

(5) The Director shall ensure that applications for service as a volunteer under this part are available to the public on request to the ACTION Agency (including any State or regional offices of the Agency) and that an individual making such request is informed of the manner in which such application may be submitted by any interested individual to, and shall be accepted by, any office of the ACTION Agency.

(6) Completed applications received by the ACTION Agency shall be forwarded to the regional ACTION office representing the State in which such applicant resides. The regional or State employees designated in subparagraphs (C) and (D) of paragraph (2) shall assist in evaluating such applications and, to the extent feasible and appropriate, interviewing applicants.

(7)(A) The Director shall provide for the assignment of each applicant approved as a volunteer under this part to a project or program that is, to the maximum extent practicable, consistent with the abilities, experiences, and preferences of such applicant that are set forth in the application described in paragraph (4) and the needs and preferences of projects or programs approved for the assignment of such volunteers.

(B) In carrying out subparagraph (A), the Director shall utilize the information system established under paragraph (2)(B).

(C) A sponsoring organization of VISTA may recruit volunteers for service under this part. The Director shall give a locally recruited volunteer priority for placement in the sponsoring organization of VISTA that recruited such volunteer.

(D) A volunteer under this part shall not be assigned to any project or program without the express approval and consent of such project or program.

(E) If an applicant under this part who is recruited locally becomes unavailable for service prior to the commencement of service, the recipient of the project grant or contract that was designated to receive the services of such applicant may replace such applicant with another qualified applicant approved by the Director.

(F) If feasible and appropriate, low-income community volunteers shall be given the option of serving in the home communities of such volunteers in teams with nationally recruited specialist volunteers. The Director shall attempt to assign such volunteers to serve in the home or nearby communities of such volunteers and shall make national efforts to attract other individuals to serve in the VISTA program. The Director shall also, in the assignment of volunteers under this subparagraph, recognize that community-identified needs that cannot be met in the local area and the individual desires of VISTA volunteers in regard to the service in various geographical areas of the United States should be taken into consideration.

(c)(1) The Director, in conjunction with the regional or State employees designated in subparagraphs (C) and (D) of subsection (b)(2), shall engage in public awareness and recruitment activities. Such activities shall include --

(A) public service announcements through radio, television, and the print media;

(B) advertising through the print media, direct mail, and other means;

(C) disseminating information about opportunities for service as a volunteer under this part to relevant entities including institutions of higher education and other educational institutions (including libraries), professional associations, community-based agencies, youth service and volunteer organizations, business organizations, labor unions, senior citizens organizations, and other institutions and organizations from or through which potential volunteers may be recruited;

(D) disseminating such information through presentations made personally by employees of the ACTION Agency or other designees of the Director, to students and faculty at institutions of higher education and to other entities described in subparagraph (C), including presentations made at the facilities, conventions, or other meetings of such entities;

(E) publicizing the student loan deferment and forgiveness opportunities available to VISTA volunteers under parts B and E of title IV of the Higher Education Act of 1965 (20 U.S.C. §1071 et seq.) and including such information in all applications and recruitment materials;

(F) providing, on request, technical assistance with the recruitment of volunteers under this part to programs and projects receiving assistance under this part; and

(G) maintaining and publicizing a national toll-free telephone number through which individuals may obtain information about opportunities for service as a volunteer under this part and request and receive an application for such service.

(2) In designing and implementing the activities authorized under this section, the Director shall seek to involve individuals who have formerly served as volunteers under this part to assist in the dissemination of information concerning the program established under this part. The Director may reimburse the costs incurred by such former volunteers for such participation, including expenses incurred for travel.

(3) The Director shall consult with the Director of the Peace Corps to coordinate the recruitment and public awareness activities carried out under this subsection with those of the Peace Corps and to develop joint procedures and activities for the recruitment of volunteers to serve under this part.

(4) At the beginning of each fiscal year, the Director shall develop an annual plan for the recruitment of volunteers under this part that --

(A) describes in detail (including the cost) the recruitment and public awareness activities carried out during the preceding fiscal year and evaluates the effectiveness of such activities;

(B) identifies methods and goals for the recruitment of volunteers during the fiscal year in which such plan is made, including specific methods and goals for the recruitment of individuals 55 years of age and older, individuals 18 through 27 years of age, recent graduates of institutions of higher education, and special skilled volunteers; and

(C) describes in detail (including the expected cost) the recruitment and public awareness activities that shall be undertaken throughout the year to achieve the goals specified in subparagraph (B); and

(D) describes in detail (including the expected cost) the recruitment and public awareness activites that shall be undertaken throughout the year to achieve the goals for the recruitment of individuals described in subparagraph (B).

(5) The Director shall ensure that not less than 20 percent of all volunteers under this part are 55 years of age or older and that, by the beginning of fiscal year 1991 and for each fiscal year thereafter, not less than 20 percent of all such volunteers are between 18 and 27 years of age, (inclusive).

(6) Beginning in fiscal year 1991 and for each fiscal year therafter, for the purpose of carrying out this subsection, the Director shall obligate not less than 1.5 percent of the amounts appropriated for each fiscal year under section 501(a)[42 U.S.C. §5081(a)].

(d) The Director shall provide each low-income community volunteer with an individual plan for job advancement or for transition to a situation leading to gainful employment. Whenever feasible, such efforts shall be coordinated with an appropriate private industry council under the Job Training Partnership Act [29 U.S.C. §1501 et seq.]

(e) The Director may provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this part to (1) encourage them to use, in the national interest, the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers.

(f) Except as provided in subsection (d) of this section, the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(g) Volunteers under this part shall not be assigned to work in a program or project in any community unless the application for such program or project contains evidence of local support and has been submitted to the Governor or other chief executive officer of the State concerned, and such Governor or other chief executive officer has not, within 45 days of the date of such submission, notified the Director in writing, supported by a statement of reasons, that such Governor or other chief executive officer disapproves such program or project. In the event of a timely request in writing, supported by a statement of reasons, by the Governor or other chief executive officer of the State concerned, the Director shall terminate a program or project or the assignment of a volunteer to a program or project not later than 30 days after the date such request is received by the Director, or at such later date as is agreed upon by the Director and such Governor or other chief executive officer.

TERMS AND PERIODS OF SERVICE

42 U.S.C. §4954

Sec. 104. (a) Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and poverty-related problems. To the maximum extent practicable, the requirement for full-time commitment shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.

(b) Volunteers serving under this part may be enrolled for periods of service not exceeding two years, but for not less than one-year periods of service, except that volunteers serving under this part may be enrolled for periods of service of less than one year when the Director determines, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce-skill need. Volunteers serving under this part may be reenrolled for periods of service totaling not more than two years. No volunteer shall serve for more than a total of five years under this part.

(c) Volunteers under this part shall, upon enrollment, take the oath of office as prescribed for persons appointed to any office of honor or profit by section 3331 of Title 5, and shall swear (or affirm) that the volunteer does not advocate the overthrow of the constitutional form of government of the United States and that the volunteer is not a member of an organization that advocates the overthrow of the constitutional form of government of the United States, knowing that such organization so advocates, except that persons legally residing within a State but who are not citizens or nationals of the United States, may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances and to present their views in connection with the terms and conditions of their service. The Director shall promptly provide to each volunteer in service on the date of enactment of this Act, and to each such volunteer beginning service thereafter, information regarding such procedure and the terms and conditions of their service.

SUPPORT SERVICES

42 U.S.C. §4955

Sec. 105. (a)(1) The Director may provide a stipend to volunteers, while they are in training and during their assignments, enrolled for periods of service of not less than one year under this part, except that the Director may, on an individual basis, make an exception to provide a stipend to a volunteer enrolled under this part for an extended period of service not totaling one year. Such stipend shall not exceed $75 per month in fiscal year 1990, $90 per month in fiscal year 1991, and $95 per month in subsequent fiscal years during the volunteer's service, except that the Director may provide a stipend not to exceed $75 per month in fiscal year 1990, $90 per month in fiscal year 1991, and $95 per month in subsequent fiscal years in the case of persons who have served for at least one year and who, in accordance with standards established in regulations which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.

(2) Stipends shall be payable only upon completion of a period of service, except that under such circumstances as the Director shall determine, in accordance with regulations which the Director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(b)(1) The Director shall also provide volunteers such living, travel (including travel to and from places of training and to and from locations to which volunteers are assigned during periods of service) and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, pre-service training and where appropriate in-service training, technical assistance, and such other support as the Director deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

(2) The Director shall set the subsistence allowance for volunteers under paragraph (1) for each fiscal year so that --

(A) the minimum allowance is not less than an amount equal to 95 percent of such poverty lines (as defined in section 9902(2) of title 42, United States Code) for a single individual as expected for each fiscal year; and

(B) the average subsistence allowance, excluding allowances for Hawaii, Guam, American Samoa, and Alaska, is no less than 105 percent of such poverty line.

(3)(A) The Director shall consult with regional and State offices of the ACTION Agency to make a determination of the cost of living within each State and whether there are significant local price differentials within the State.

(B) The Director shall adjust the subsistence allowances for volunteers serving in areas that have a higher cost of living than the national average to reflect such higher cost.

(4) The Director, in coordination with regional and State offices of the ACTION Agency and taking into account paragraphs (2) and (3), shall establish a method for setting subsistence allowances. The Director shall submit a report on such methods to the appropriate authorizing committees of Congress not later than 90 days after the date of enactment of the fiscal year 1990 appropriation.

PARTICIPATION OF PROGRAM BENEFICIARIES

42 U.S.C. §4956 Sec. 106. To the maximum extent practicable, the people of the communities to be served by volunteers under this title shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies, shall establish in regulations, a continuing mechanism for the meaningful participation of such program beneficiaries.

PARTICIPATION OF OLDER PERSONS

42 U.S.C. §4957 Sec. 107. In carrying out this part and part C of this title, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons membership groups as volunteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.

LIMITATION ON FUNDS APPROPRIATED FOR GRANTS AND CONTRACTS FOR DIRECT COST OF SUPPORTING VOLUNTEERS IN PROGRAMS OR PROJECTS

42 U.S.C. §4958 Sec. 108. (a) Of funds appropriated for the purpose of this part under section 501, 42 U.S.C. §5081, not more than 30 percent for the fiscal year ending September 30, 1984, and for each fiscal year thereafter, may be obligated for the direct cost of supporting volunteers in programs or projects carried out pursuant to grants and contracts made under section 402(12) [42 U.S.C. §5042(12)].

(b) No funds shall be obligated under this part pursuant to grants or contracts made after the date of the enactment of the Domestic Volunteer Service Act Amendments of 1979 for new projects for the direct cost of supporting volunteers unless the recipient of each such grant or contract has been selected through a competitive process which includes--

(1) public announcements of the availability of funds for such grants or contracts, general criteria for the selection of new recipients, and a description of the application process and the application review process; and

(2) a requirement that each applicant for any such grant or contract identify, with sufficient particularity to assure that the assignments of volunteers under such grants and contracts will carry out the purpose of this part, the particular poverty or poverty-related problems on which the grant or contract will focus, and any such grant or contract shall specifically so identify such problems.

VISTA LITERACY CORPS

42 U.S.C. §4959 Sec.. 109.(a) As part of the Volunteers in Service to America program established under this part, the Director shall establish a VISTA Literacy Corps for the purpose of developing, strengthening, supplementing, and expanding efforts of both public and nonprofit organizations at the local, State, and Federal level to mobilize local, State, Federal, and private sector financial and volunteer resources to address the problem of illiteracy throughout the United States.

(b) The Director shall assign volunteers to projects and programs that meet the antipoverty criteria of part A that provide assistance to functionally illiterate and illiterate individuals who are unserved or underserved by literacy education programs, with special emphasis upon disadvantaged individuals having the highest risk of illiteracy, and individuals with the lowest reading and educational level of competence.

(c)(1) The Director shall assign volunteers under this subsection to projects and programs that utilize volunteers to address the needs of illiterate individuals.

(2) Programs and projects under this subsection may be administered by public or private nonprofit agencies and organizations including local, State and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; antipoverty organizations; local, municipal, and State governmental entities, and administrative entities designated to administer job training plans under the Job Training Partnership Act.

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to --

(A) programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families;

(B) projects and programs serving individuals reading at the zero to fourth grade levels;

(C) projects and programs focusing on providing literacy services to high risk populations;

(D) projects and programs operating in areas with the highest concentration of individuals and families living at or below the poverty level;

(E) projects and programs providing literacy services to parents of disadvantaged children between the ages of two and eight, who may be educationally at risk; and

(F) Statewide programs and projects that encourage the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

(d)(1) The Director shall assign volunteers under this subsection to projects and programs that primarily utilize volunteers to tutor illiterate individuals.

(2) Programs and projects under this subsection may be administered by local public or private nonprofit agencies and organizations including local literacy councils and organizations, community-based nonprofit organizations, local educational agencies, local agencies administering adult basic education programs, local educational institutions, libraries, antipoverty organizations, local and municipal governmental entities, and administrative entities designated to administer job training plans under the Job Training Partnership Act.

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to local programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families.

(e) The Director shall ensure an equitable distribution of volunteers under this section in accordance with the equitable distrubution requirement of section 414 of this Act [42 U.S.C. §5054].

(f) The VISTA Literacy Corps shall consist of all volunteers serving under part A working on literacy projects and programs.

(g)(1) Funds made available under section 501(a), 42 U.S.C. §5081(a), for the purposes of this section shall be used to supplement and not supplant the level of services provided under part A in fiscal year 1986 to address the problem of illiteracy. The Director shall ensure that records are maintained to indicate the degree of compliance with this requirement.

(2) In any fiscal year in which the services provided under part A are reduced, the services provided under this section shall be proportionately reduced.

(h)(1) Subject to paragraphs (2) and (3), with respect to any individual providing volunteer services in the program under this section regarding literacy, the Director may, with the written consent of the individual, assign the individual to serve in the general program under this part regarding literacy.

(2) To the extent practicable and without undue delay, the Director shall ensure that a volunteer under this section is assigned to the vacancy created within the relevant literacy project or program established under this section.

(3) Nothing in this subsection shall diminish or otherwise affect the requirement in subsection (g)(1) of this section that funds made available for this section shall be used to supplement and not to supplant the 1986 level of literacy services provided under part A.

APPLICATIONS FOR ASSISTANCE BY PREVIOUS RECIPIENTS

42 U.S.C. Sec. 110. (a) The Director shall not deny assistance under
§4960 this part to any project or program, or any public or private nonprofit organization, solely on the basis of the duration of the assistance such project, program, or organization has previously received under this part.

(b) The Director shall consider each application for the renewal of assistance under this part to any project or program on an individualized, case-by-case basis, taking into account --

(1) the extent to which the sponsoring organization has made good faith efforts to achieve the goals agreed on in the application of such project or program; and

(2) any extenuating circumstance beyond the control of the sponsoring organization that may have prevented, delayed, or otherwise impaired the achievement of such goals.

(c) The Director shall consider each application for assistance under this part for a new project or program, that is submitted by a public or private nonprofit organization that has previously received such assistance (so long as such new project or program is clearly distinct from activities for which the organization has previously received such assistance), on an equal basis with all other applications for such assistance and without regard for the fact that the organization has previously received such assistance.

(d) With respect to any consideration that relates to the duration of assistance under this part and that is applied by the Director in the case of a request for a renewal of assistance under this part, the Director may not apply any such consideration against any entity that is --

(1) functioning as an intermediary between the Director and organizations requesting such renewal and ultimately receiving such assistance; and

(2) utilized by such organizations --

(A) to prepare and submit applications for such assistance to the Director; and

(B) to perform other administrative functions and services associated with applying for and receiving such assistance.

(e) All eligible public and private nonprofit organizations shall be able to apply for assistance under this part.

(f) The Director shall ensure that the language of each of subsections (a) through (e) is included verbatim in --

(1) an application developed by the agency for use by individuals who request assistance under this part for a project or program; and

(2) any regulation or guideline issued for the program established under this part.

PART B - STUDENT COMMUNITY SERVICE PROGRAMS

CONGRESSIONAL STATEMENT OF PURPOSE

42 U.S.C. §4971 Sec. 111. (a) The purpose of this part is to assist students, through service-learning programs and community service programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems. Its purpose further is to provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self- supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning and community service programs and otherwise.

(b) This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education. The purpose of the UYA program is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of course-work while attending such institutions. Volunteer service under this part is conducted in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals experiencing such problems.

AUTHORITY TO OPERATE UNIVERSITY YEAR FOR ACTION PROGRAM

42 U.S.C. §4972 Sec. 112. Except as otherwise provided in this part, the Director is authorized to conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this title, except for the provisions of sections 103(f) and 104(d), [42 U.S.C. §§4953(f), 4954(d)] and except that the Director may, in accordance with regulations the Director shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

SPECIAL CONDITIONS

42 U.S.C. §4973 Sec. 113. (a) Volunteers serving under this part shall be enrolled for periods of service as provided for in subsection (b) of section 104, [42 U.S.C. §4954(b)], except that volunteers serving in the University Year for ACTION program may be enrolled for periods of service of not less than the duration of an

academic year, but volunteers enrolled for less than 12 months shall not receive stipends under section 105(a)(1), [42 U.S.C. §4955(a)(1)]. Volunteers serving under this part may receive academic credit for such service in accordance with the regulations of the sponsoring institution of higher education.

(b) Grants to and contracts with institutions to administer programs under this part shall provide that prospective student volunteers shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institutions in order to assist in meeting the needs of such poor persons.

(c)(1) In making grants or contracts for the administration of UYA programs under this part, the Director shall insure that financial assistance under this Act to programs carried out pursuant to section 112 of this part [42 U.S.C. §4972] shall not exceed 90 per centum of the total cost (including planning costs) of such program during the first year and such amounts less than 90 per centum as the Director, in consultation with the institution, may determine for not more than four additional years, including years in which support was received under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d). Each such grant or contract shall stipulate that the institution will make every effort to (A) assume an increasing proportion of the cost of continuing a program carrying out the purpose of this part while the institution receives support under this part; (B) waive or otherwise reduce tuition for participants in such program, where such waiver is not prohibited by law; (C) utilize students and faculty at such institution to carry out, on a self-supporting basis, appropriate planning for such programs; and (D) maintain similar service-learning programs after such institution no longer receives support under this part.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions with commitments entered into under paragraph (1) of this subsection and shall advise the Secretary of Health and Human Services of the extent of each such institution's compliance.

STUDENT COMMUNITY SERVICE PROGRAMS

42 U.S.C. §4974

Sec. 114.(a) The Director is authorized to make grants and contracts for technical assistance, training, and projects which encourage and enable students in secondary, secondary vocational, and postsecondary schools to participate in service-learning and community service programs on an in-school or out-of-school basis in assignments of a character and on such terms and conditions as are described in subsections (a) and (e) of section 103 [42 U.S.C. §4953]. Any project assisted under this part shall meet the anti-poverty criteria of section 111 [42 U.S.C. §4971] and contain an educational and service component.

(b) Persons serving as volunteers under this section shall not be deemed to be Federal employees for any purposes.

(c) The Director may provide volunteers serving under this section a living allowance and only such other support or allowances as the Director determines, pursuant to regulations which the Director shall prescribe, are required because of unusual or special circumstances affecting the program.

PART C - SPECIAL VOLUNTEER PROGRAMS

CONGRESSIONAL STATEMENT OF PURPOSE

42 U.S.C. §4991 Sec. 121. This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs. It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.

AUTHORITY TO ESTABLISH AND OPERATE SPECIAL VOLUNTEER PROGRAMS OR DEMONSTRATION PROGRAMS

42 U.S.C. §4992 Sec. 122. (a)(1) The Director is authorized to conduct or make grants or contracts, or both, for special volunteer programs in urban and rural areas (including Indian reservations) or demonstration programs (such as but not limited to a program to provide alternatives to the incarceration of youthful offenders, a program to promote educational opportunities for veterans, a program to provide community-based peer group outreach and counseling for drug abusers, a program of assistance to victims of domestic violence, a program to provide technical and management assistance to distressed communities, a program designed to provide personal and group financial counseling to low-income and fixed-income individuals (utilizing volunteers with specialized or technical expertise), and a Helping Hand program) designed to stimulate and initiate improved methods of providing volunteer services, to encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part, and to identify particular segments of the poverty community which could benefit from volunteer and other antipoverty efforts. In carrying out programs authorized by this part, the Director is authorized to provide for the recruitment, selection, and training of volunteers.

(2) For purposes of this subsection, the term "Helping Hand" program means a program utilizing person-to-person services to reduce the necessity for institutionalization (in hospitals, mental institutions, nursing homes, other extended-care settings, and other facilities) and to ameliorate residential isolation (through senior centers, half-way house facilities, and other residential settings) of older persons, handicapped persons, and other affected persons, stressing interactions between persons from various age groups, particularly young and old, and carried out in coordination with the appropriate State system for the protection and advocacy of the rights of persons with

developmental disabilities established pursuant to section 113 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6012).

(b) Except as provided in subsection (c) of this section assignment of volunteers under this section shall be on such terms and conditions as the Director shall determine, pursuant to regulations which the Director shall prescribe.

(c)(1) The Director, in accordance with regulations which the Director shall prescribe, may provide to volunteers enrolled for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks under this part such allowances, support, and services as are described in section 105(b)[42 U.S.C. §4955(b)] and as the Director determines are necessary to carry out the purpose of this part, and shall apply the provisions of sections 104(c) and 105(b)[42 U.S.C. §§4954(c), 4955(b)] to the service of volunteers enrolled for full-time service under this part.

(2) The Director, in accordance with regulations which the Director shall prescribe with respect to volunteers enrolled for periods of full-time service of not less than one year under this part--

(A) may provide to such volunteers such stipends in total amounts not in excess of stipends provided under section 105(a) to volunteers serving under part A of this title, [42 U.S.C. §4955(a)], as the Director determines are necessary to carry out the purpose of this part; and

(B) to the extent that the terms and conditions of the service of such volunteers are of similar character to the terms and conditions of the service of volunteers enrolled under Part A of this title, shall apply to the service of such volunteers enrolled under this part the provision of sections 103(b) [42 U.S.C. §4953(b)] relating to low-income community volunteers, 103(f) [42 U.S.C. §4953(f)], 104 (d),[42 U.S.C. §4954(d)], and 105(a) [42 U.S.C. §4955(a)] to the extent such provisions are applied to the service of volunteers enrolled under such part A.

(d)(1) In carrying out programs authorized by this part, the Director shall establish criteria to make grants and enter into contracts, in each fiscal year, on the basis of merit and the equitable geographic distribution of programs.

(2) No grant or contract exceeding $50,000 shall be made under this part unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(3) After the date of enactment of the Domestic Volunteer Service Act Amendments of 1989, no grant or contract under this part may exceed $250,000.

(4) Multiple grants or contracts to the same grantee or contractor within any one year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contracts.

(e) None of the amounts made available under section 501(c) [42 U.S.C. §5081(c)] for fiscal year 1990 or subsequent fiscal years may be expended for the purpose of establishing or operating any State office with respect to volunteerism.

TECHNICAL AND FINANCIAL ASSISTANCE FOR IMPROVEMENT OF VOLUNTEER PROGRAMS

42 U.S.C. §4993 Sec. 123.(a) The Director may provide technical and financial assistance to Federal agencies, State and local governments and agencies, and private nonprofit organizations, which utilize or desire to utilize volunteers in connection with carrying out the purpose of this part. Such assistance may be used to facilitate and improve (1) methods of recruiting, training, or utilizing volunteers, (2) technical assistance and training programs, including the creation or expansion of private capabilities where possible and the development of voluntary organizations, with particular emphasis on low-income, minority, and community-based groups, or (3) the administration of volunteer programs. In providing such technical and financial assistance, the Director shall utilize, to the maximum extent feasible, existing programs, and shall seek to avoid duplication of existing programs in the public or private sectors.

(b)(1) The Director shall provide assistance for identification, development, and dissemination of effective literacy materials and programs by grant or contract to public and private nonprofit organizations whose principal purpose is combatting of illiteracy and its associated problems.

(2) The Director shall consult with and annually submit summaries of exemplary projects based on project reports to the national clearinghouse on literacy education, as designated under section 1211a(d)(2) of Title 20 [20 U.S.C. §1211a(d)(2)].

(3) The emphasis for the grants or contacts under paragraph (1) shall be --

(A) broadly disseminating information relating to training and technical assistance for the use of volunteers in projects or programs providing literary services in poor urban and rural areas, including English language literacy services for individuals with limited English proficiency; or

(B) developing new and innovative solutions to illiteracy problems that involve the more effective and extensive use of volunteers in such projects or programs.

DRUG ABUSE EDUCATION AND PREVENTION SERVICES AND ACTIVITIES

42 U.S.C. §4994 Sec. 124.(a) The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (including grants, contracts, conferences, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations).

(b)(1) The Director is authorized to make grants to public and nonprofit organizations for innovative, community-based volunteer demonstration projects which provide comprehensive drug abuse education and prevention services and activities to youths during the summer months. Such projects may include --

(A) extending effective school-based programs, or other programs operated during the school year, to the summer months;

(B) developing or expanding summer recreational, volunteer service, and youth development activities to provide for youths positive alternatives to illicit drug use; and

(C) incorporating drug abuse education and prevention activities in public and private programs which serve youths during the summer months.

(2) In awarding grants under this subsection, the Director shall give priority to projects that --

(A) serve high-risk youths; and

(B) provide opportunities for parent involvement.

(3) For the purposes of this subsection, the term "high-risk youth" has the meaning given such term in section 3192(b)(2) of Title 20 [20 U.S.C. §3192(b)(2)].

(c) In awarding grants and contracts under this section, the Director shall give priority to drug abuse education and prevention projects that serve communities, including rural communities, that have not previously received assistance under this part.

(c)1/ The Director may provide technical assistance, by grant or contract, to employers who have established or desire to establish worksite literacy programs to assist such employers in obtaining, training, and integrating volunteers into worksite literacy programs. The Director shall coordinate any activities assisted under this subsection with the Department of Education Workplace Literacy programs established under Part C [20 U.S.C. §1211 et seq.] of the Adult Education Act (20 U.S.C. 1201 et seq.)

(d) The Director shall provide for the evaluation of activities and projects conducted with financial assistance received under this section. An application for a grant under this section in excess of $10,000 shall include a description of the methods to be used in evaluating the impact any activities and programs financed through such grant have on the drug abuse problem within the communities where such activities and projects are carried out.

1/ P.L. 101-204 added this additional subsection (c) to Section 124, [42 U.S.C. §4994].

VOLUNTEERS FOR LITERACY

"LITERACY CHALLENGE GRANTS"

42 USC 4995.

Sec. 125. (a) The Director is authorized to award challenge grants to eligible public agencies and private organizations to pay the Federal share of the costs of establishing, operating or expanding community or employee literacy programs or projects that include the use of full-time or part-time volunteers as one method of addressing illiteracy.

(b) Each eligible organization desiring a grant under this section shall submit to the ACTION Agency an application in such form and accompanied by such information as the Director may reasonably require. Each such application shall--

(1) describe the activities for which assistance is sought,

(2) contain assurances that the eligible organization will provide from non-Federal sources the non-Federal share of the cost of the program or project,

(3) provide assurances, satisfactory to the Director, that the literacy project will be operated in cooperation with other public and private agencies and organizations interested in, and qualified to, combat illiteracy in the community where the project is to be conducted, and

(4) contain such other information and assurances as the Director may reasonably require.

(c)(1)(A) The Federal share of the cost of a program or project authorized by this section administered by a public agency, a nonprofit organization other than an organization described in paragraph (2), or a private, for-profit organization shall not exceed--

(i) 80 percent in the first fiscal year;
(ii) 70 percent in the second fiscal year; and
(iii) 60 percent in the third fiscal year.

(B) The non-Federal share paid by a private, for-profit organization shall be in cash.

(2) The Federal share of the cost of a program or project administered by a nonprofit or community-based organization shall not exceed--

(A) 90 percent in the first fiscal year;
(B) 80 percent in the second fiscal year; and
(C) 70 percent in the third fiscal year.

(3) The non-Federal share provided by a public agency or a nonprofit or community-based organization may be provided in cash, or in kind, fairly evaluated, and may include the use of plant, equipment, and services.".

(2) CONFORMING AMENTMENT.- The table of contents contained in the first section of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 note) is amended by inserting after the item relating to section 124 the following item.

TITLE II--OLDER AMERICAN VOLUNTEER PROGRAMS

PART A - RETIRED SENIOR VOLUNTEER PROGRAM

STATEMENT OF PURPOSES

42 U.S.C. §5000 Sec. 200. It is the purpose of --

(1) this title to provide for Older American Volunteer Programs, comprised of the retired senior volunteer program, the foster grandparent program, and the senior companion program, that empower older individuals to contribute to their communities through volunteer service, enhance the lives of the volunteers and those whom they serve, and provide communities with valuable services;

(2) part A, the retired senior volunteer program, to utilize the vast talents of older individuals wlling to share their experiences, abilities, and skills in responding to a wide variety of community needs;

(3) part B, the foster grandparent program, to afford low-income older individuals an opportunity to provide supportive, individualized services to children with exceptional or special needs; and

(4) part C, the senior companion program, to afford low-income older individuals the opportunity to provide personal assistance and companionship to other older individuals through volunteer service.

GRANTS AND CONTRACTS FOR VOLUNTEER SERVICE PROJECTS

42 U.S.C. §5001 Sec. 201.(a) In order to help retired persons to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 305(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3025(a)(1)) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service projects under this section, if the Director determines, in accordance with regulations the Director shall prescribe, that--

(1) volunteers will not be reimbursed for other than transportation, meals, and other out-of-pocket expenses incident to the provision of services under this part;

(2) only individuals aged sixty or over will be enrolled as volunteers to provide services under this part (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities

or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;
(3) the project includes such short-term training as may be necessary to make the most effective use of the skills and talents of participating volunteers and individuals, and provide for the payment of the reasonable expenses of such volunteers while undergoing such training; and
(4) the project is being established and will be carried out with the advice of persons competent in the field of service involved, and of persons with interest in and knowledge of the needs of older persons.

(b) In no event shall the required proportion of the local contribution (including in-kind contributions) for a grant or contract made under this section be more than 10 per centum in the first year of assistance under this section, 20 per centum in the second such year, and 30 per centum in any subsequent such years: Provided, however, That the Director may make exceptions in cases of demonstrated need, determined (in accordance with regulations which the Director shall prescribe) on the basis of the financial capability of a particular recipient of assistance under this section, to permit a lesser local contribution proportion than any required contribution proportion established by the Director in generally applicable regulations.

(c) The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 305 (a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3025(a)(1), such agency itself is the recipient of the award or such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(d) Notwithstanding any other provision of law, volunteer service under this part shall not be deemed employment for any purpose which the Director finds is not fully consistent with the provisions and in furtherance of the purpose of this part.

PART B - FOSTER GRANDPARENT PROGRAM

GRANTS AND CONTRACTS FOR INDIVIDUAL SERVICE PROJECTS

42 U.S.C. §5011 Sec. 211. (a) The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part) designed for the purpose of providing opportunities for low-income persons aged sixty or over to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs, including services by individuals serving as "foster grandparents" to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if the Director determines, in accordance with regulations the Director shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 611(a) of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b(a)) or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b)(1) Any public or private nonprofit agency or organization responsible for providing person-to-person services to a child in a project carried out under subsection (a) of this section shall have the exclusive authority to determine, pursuant to the provisions of paragraph (2) of this subsection--

(A) which children may receive supportive person-to-person services under such project; and

(B) the period of time during which such services shall be continued in the case of each individual child.

(2) In the event that such an agency or organization determines that it is in the best interests of a mentally retarded child receiving, and of a particular foster grandparent providing, services in such a project, such relationship may be continued after the child reaches the chronological age of 21: Provided, That such child was receiving such services prior to attaining the chronological age of 21. If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.

(3) Any determination made by a public or nonprofit private agency or organization under paragraphs (1) and (2) of this subsection shall be made through mutual agreement by all parties involved with respect to the provision of services to the child involved.
(c) For the purposes of this section, the terms "child" and "children" mean any individual or individuals who are less than 21 years of age.
(d) The Director, in accordance with regulations the Director shall prescribe, may provide to low-income persons serving as volunteers under this part, such allowances, stipends, and other support as the Director determines are necessary to carry out the purpose of this part. Any stipend or allowance provided under this subsection shall not be less than $2.20 per hour until October 1, 1990, $2.35 per hour during fiscal year 1991, and $2.50 per hour on and after October 1, 1992, except that (1) such stipend or allowance shall not be increased as a result of an amendment made to this sentence unless the funds appropriated for carrying out this part are sufficient to maintain for the fiscal year in question a number of participants to serve under this part at least equal to the number of such participants serving during the preceding fiscal year, and (2) in the event that sufficient appropriations for any fiscal year are not available to increase any such stipend or allowance provided to the minimum hourly rate specified in this sentence, the Director shall increase the stipend or allowance to such amount as appropriations for such year permit consistent with clause (1) of this exception.
(e) For purposes of this part, the terms "low-income person" and "person of low income" mean -

(1) any person whose income is not more than 125 per centum of the poverty line defined in section 9902(2) of this title [42 U.S.C. §9902(2)] and adjusted by the Director in the manner described in such section; and

(2) any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the director after taking into consideration existing poverty guidelines as appropriate to local situations.

Persons described in paragraph (2) shall be given special consideration for participation in projects under this part.
(f)(1)(A) Except as provided in subparagraphs (B) and (C), individuals who are not low-income persons may serve as volunteers under this part, in accordance with such regulations as the Director shall issue, if such individuals serve without receiving any allowance, stipend, or other financial support under this part except reimbursement for transportation, meals, and out-of-pocket expenses incident to serving under this part.

(B) The regulations issued by the Director to carry out this part (other than any regulations relating to allowances, stipends, and other financial support authorized by subsection (d) of this section to be paid under this part to low-income persons) shall apply to all volunteers under this part, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.
(C) Individuals who are not low-income persons may not serve as volunteers under this part in any community in which there are volunteers under part A of this title unless such individuals have been referred previously for possible placement as volunteers under part A of this title and such placement did not occur.
(2)(A) Except as provided in subparagraph (B), each recipient of a grant or contract to carry out a project under this part shall give equal treatment to all volunteers who participate in such project, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.
(B) An individual who is not a low-income person may not become a volunteer under this part if allowing such individual to become a volunteer under this part would prevent a low-income individual from becoming a volunteer under this part or would displace a low-income person from being such a volunteer.
(3) The Director may not take into consideration require as a condition of receiving a grant or contract to carry out a project under this part, any applicant for such grant or contract --

(A) to accept or recruit individuals who are not low-income persons to serve as volunteers under this part; or

(B) to solicit locally generated contributions, in cash or in kind, to support such individuals.

The Director may not coerce any applicant for, or recipient of, such grant or contract to engage in conduct described in subparagraph (A) or (B).

(4)Funds appropriated to carry out this part may not be used to pay any cost, including any administrative cost, incurred in connection with volunteers under this part who do not receive a stipend under subsection (d) of this section. Such cost incurred with respect to a volunteer may be paid with --

(A) funds received by the Director as unrestricted gifts;

(B) funds received by the Director as gifts to pay such cost;

(C) funds contributed by such volunteer; or

(D) locally generated contributions in excess of the amount required to be contributed under subsection (a) of this section, in the discretion of the recipient of a grant or contract under such subsection.

CONDITIONS OF GRANTS AND CONTRACTS

42 U.S.C. §5012

Sec. 212. (a)(1) In carrying out this part, the Director shall insure that individuals receiving assistance in any project are older persons of low income who are no longer in the regular work force.

(2)(A) The Director shall award a grant or contract under this part for a project to be carried out over an area in a State more comprehensive than one comunity, to the State agency established or designated pursuant to section 305(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3025(a)(1)), unless (i) the State has not established or designated such an agency; or (ii) such agency has been afforded at least 45 days to (I) review the project application made by a prospective grantee or contractor other than such agency for a project to be carried out in such State; and II) make recommendations thereon. In the event that such an established or designated State agency is not awarded the grant or contract, any application approved for a project in such State shall contain or be supported by satisfactory assurances that the project has been developed, and will, to the extent feasible, be conducted, in consultation with, or with the participation of, such agency.

(B) The Director shall award a grant or contract under this part for a project to be carried out entirely in a community served by a community action agency, to such agency unless such agency and the State agency established or designated pursuant to section 305(a)(1) have been afforded at least 45 days to (i) review the project application made by a prospective grantee or contractor other than either such agency for a project to be carried out in such community; and (ii) make recommendations thereon. In the event that such a community action agency or such an established or designated

State agency is not awarded the grant or contract, any application approved for a project to be carried out entirely in such community shall contain or be supported by satisfactory assurances that the project has been developed, and will, to the extent feasible, be conducted, in consultation with, or with the participation of, such community action agency.

(b) The term "community action agency" as used in this section means an eligible entity as defined in section 9902(1) of this title [42 U.S.C. §9902 (1)].

PART C - SENIOR COMPANION PROGRAM

GRANTS AND CONTRACTS FOR VOLUNTEER SERVICE PROJECTS

42 U.S.C. §5013 Sec. 213. (a) The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part in the same manner as provided in section 211(a) [42 U.S.C. §5011(a)]) designed for the purpose of providing opportunities for low-income persons aged 60 or over to serve as "senior companions" to persons with exceptional needs. Senior companions may provide services designed to help older persons requiring long-term care, including services to persons receiving home health care, nursing care, home-delivered meals or other nutrition services; services designed to help persons deinstitutionalized from mental hospitals, nursing homes, and other institutions; and services designed to assist persons having developmental disabilities and other special needs for companionship.

(b) Subsections (d), (e), and (f) of section 211, [42 U.S.C. §5011(d), (e) and (f)] and such other provisions of part B as the Director determines to be necessary, shall apply to this part, except that for purposes of this part any reference in such subsections and such provisions to part B shall be deemed to be a reference to this part.

(c)(1) The Director is authorized to make grants or contracts for senior companion projects to assist homebound elderly individuals to remain in their own homes and to enable institutionalized elderly individuals to return to home care settings.

(2)(A) The Director is authorized to recruit, subject to subparagraph (B), senior companion volunteer trainers who on the basis of experience (such as, doctors, nurses, home economists, social workers) will be used to train senior companion volunteers to participate in and monitor initial and continuing needs assessments and appropriate in-home services for senior companion volunteer recipients. The needs assessments and in-home services shall be coordinated with and supplement existing community based home health and long-term care systems. The Director may also use senior companion volunteer leaders, who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities may spend time in the program (in addition to their regular assignment) to assist newer senior companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(B) Senior companion volunteer trainers recruited under subparagraph (A) of this paragraph shall not be paid stipends.

(3) The Director shall conduct an evaluation of the impact of the projects assisted under this subsection based upon a sample survey of projects so assisted. In the third year of such

study, the Director shall prepare and submit a report to the Congress. Such evaluation study shall include information on--

(A) the extent to which costs of providing long-term care are reduced by using senior companion volunteers who receive stipends in the provision of long-term care services;

(B) the effectiveness of the provision of long-term care with the use of volunteers;

(C) the extent to which health care needs and health related costs of the senior companion volunteers themselves are affected because of their involvement in the project;

(D) the extent of coordination with other Federal and State efforts aimed at enabling older individuals to receive care in their own homes; and

(E) the effectiveness of using senior companion volunteer leaders and of involving senior companion volunteers based on the training of the volunteer leaders and volunteers.

PART D -GENERAL PROVISIONS

PROMOTION OF OLDER AMERICAN VOLUNTEER PROGRAMS

42 U.S.C. §5021 Sec. 221.(a) In carrying out this title, the Director shall consult with the Departments of Labor and Health and Human Services, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this title with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this title and in promoting the identification and interest of low-income and other older persons whose services may be utilized in projects under this title.

(b)(1) In carrying out this title, the Director shall encourage and facilitate the efforts of private organizations to promote the programs established in parts A, B, and C of this title and the involvement of older individuals as volunteers in such programs.

(2) The Director shall take appropriate actions to ensure that special efforts are made to publicize the programs established in parts A, B, and C of this title, in order to facilitate recruitment efforts, to encourage greater participation of volunteers, and to emphasize the value of volunteering to the health and well-being of volunteers and the communities of such volunteers. Such actions shall include informing recipients of grants and contracts under this title of all informational materials available from the Director.

(3) From funds appropriated under section 502 of this Act [42 U.S.C. §5082] the Director shall expend not less than $250,000 in each fiscal year to carry out paragraph (2).

PAYMENTS

42 U.S.C. §5022 Sec. 222. Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

MINORITY GROUP PARTICIPATION

42 U.S.C. §5023 Sec. 223. The Director shall take appropriate steps to insure that special efforts are made to recruit, select, and assign qualified individuals sixty years and older from minority groups to serve as volunteers under this title.

USE OF LOCALLY GENERATED CONTRIBUTIONS

42 U.S.C. §5024 Sec. 224. Whenever locally generated contributions made to volunteer projects for older Americans under this title are in excess of the amount required by the Director, the Director may not restrict the manner in which such contributions are expended if expenditures from locally generated contributions are not inconsistent with the provisions of this Act.

PROGRAMS OF NATIONAL SIGNIFICANCE

42 U.S.C. §5025 Sec. 225.(a)(1) With not less than one-third of the funds made available under subsection (d) of this section in each fiscal year, the Director shall make grants under the programs authorized in parts A, B, and C of this title to support programs that address national problems of local concern.

(2) Except as provided in paragraph (3), the Director may make such grants--

(A) under the program authorized in part A of this title, to support programs that address the national problems specified in subsection (b) of this section;

(B) under the program authorized in part B of this title, to support programs that address the national problems specified in subsection (b) of this section, other than paragraph (10) of such subsection; and

(C) under the program authorized in part C of this title, to support programs that address the national problems referred to in paragraphs (1), (2),(5),(6), and (10) of subsection (b) of this section.

(3) Each program for which a grant is received under this subsection shall be carried out in accordance with the requirementss applicable to the program under part A, B, or C of this title, under which the program support by such grant is to be carried out.

(b) The Director shall make grants under subsections (a) of this section to support one or more of the following programs to address problems that concern the Nation:

(1) Programs that assist individuals with chronic and debilitating illnesses, such as acquired immune deficiency syndrome.

(2) Programs designed to decrease drug and alcohol abuse.

(3) Programs that work with teenage parents.

(4) Programs that match volunteer mentors with youth who need guidance.

(5) Programs that provide adult and school-based ilteracy assistance.

(6) Programs that provide respite care, including care for frail elderly individuals and for disabled or chronically ill children living at home.

(7) Programs that provide before-and after-school activities that are sponsored by organizations, such as libraries, that serve children of working parents.

(8) Programs that work with boarder babies.

(9) Programs that serve children who are enrolled in child care problems, giving priority to such programs that serve children with special needs.

(10) Programs that provide care to developmentally disabled adults who reside at home and in community-based settings, including programs that, when appropriate, involve older developmentally disabled individuals as volunteers under this title.

(11) Programs that provide volunteer tutors to assist educationally disadvantaged children, on a one-to-one basis, to improve the basic skills of such children.

(c)(1) In order for an applicant to be eligible to receive a grant under subsection (a) of this section, such applicant shall demonstrate to the Director that such grant will be used to increase the total number of volunteers supported by such applicant under this title.

(2) Funds made available under subsection (d) of this section shall be used to supplement and not supplant the number of volunteers engaged in activities under parts A, B, and C of this title (without regard to this section) addressing the problem for which such funds are awarded unless such sums are an extension of funds previously provided under this section.

(d)(1) Except as provided in paragraph (2), in each fiscal year there shall be available to the Director to make grants under subsection (a) not more than --

(A) $6,000,000 from funds appropriated under section 502(a) [42 U.S.C. §5082 (a)];

(B) $9,000,000 from funds appropriated under section 502(b) [42 U.S.C. §5082(b)]; and

(C) $9,000,000 from funds appropriated under section 502 (c) [42 U.S.C. §5082(c)].

(2) No funds shall be available to the Director to make grants under subsection (a) of this section for a fiscal year unless the amounts appropriated under subsections (a), (b), and (c) of section 502 [42 U.S.C. §5082] and available for such fiscal year to carry out parts A, B, and C of this title (without regard to this section) are sufficient to maintain the number of projects and volunteers funded under parts A, B, and C, of this title respectively, in the preceding fiscal year.

(e) The Director shall disseminate information on grants that may be made under subsection (a) of this section to field personnel of the ACTION Agency and to community volunteer organizations that request such information.

ADJUSTMENTS TO FEDERAL FINANCIAL ASSISTANCE

42 U.S.C. §5026 Sec.226.(a)(1)(A) In determining the amount of Federal financial assistance to be provided under this title to applicants, the Director shall consider the impact of changes in the Consumer Price Index For All Urban Consumers pblished by the Bureau of Labor Statistics of the Department of Labor on the administrative costs of operating the projects for which such assistance will be provided.

(B) The Director shall, to the fullest extent practicable, make appropriate adjustments in the amount referred to in subparagraph (A) to ensure the effective administration of such projects.

(2) The Director shall take reasonable actions to inform applicants for such assistance that such adjustments may be available.

(b)(1) The Director shall submit annually, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report on the extent to which adjustments are made under subsection (a) of this section.

(2) With respect to each of parts A, B, and C of this title, the Director shall include in such report --

(A) a summary of the number of, and purposes for which, such adjustments are requested by the recipients of grants and contracts under parts A, B, and C of this subchapter, respectively;

(B) a description of the extent that such requests are accommodated; and

(C) a statement explaining the decisions made by the Director with respect to the requested adjustments.

MULTIYEAR GRANTS OR CONTRACTS

42 U.S.C. §5027 Sec.227.(a) (1) Subject to paragraph (2) and the availability of funds, the Director may make a grant or enter into a contract under part A, B, or C of this title for a period not to exceed 3 years. Each applicant who receives a grant, or enters into a contract, under such part for a period exceeding 1 year shall comply with such regulations as the Director may issue to require such applicant --

(A) to demonstrate that such applicant is in complaince with such part and with the terms and conditions of such grant or contract; and

(B) to provide information to update the application submitted to obtain such grant or contract.

(2) If the amount appropriated for any fiscal year to carry out part A, B, or C of this title in a period during which multiyear grants or contracts are in effect under such part is less than the amount appropriated to carry out such part in the first fiscal year in such period, then the amounts payable under all such grants and contracts in effect in such period under such part shall be reduced pro rata.

(b) The Director shall require each applicant for a multiyear grant or contract under this section, to document or describe in the application any meaningful administrative savings that will result from such multiyear grant or contract.

(c) If an applicant does not receive a multiyear grant or contract under this section, the Director shall consider such applicant for a single-year grant or contract.

(d) If the Director approves an application for a contract or grant to carry out a project for a multiyear period as referred to in subsection (a) of this section, the Director shall ensure that such project shall be treated in the same manner as a single-year contract or grant with respect to --

(1) the overall level of funding for such project;

(2) any adjustments to Federal financial assistance that may be available under section 226 [42 U.S.C. §5026]; and

(3) the renewal of funding on the expiration of the term of such contract or grant.

TITLE IV -- ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

42 U.S.C. §5041 Sec. 401. There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency in order to provide a focal point for volunteerism at the national, State, and local level. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. There shall also be in such agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such agency one Associate Director who shall be appointed by the President with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code. Such Associate Director shall be designated "Associate Director for Domestic and Anti-Poverty Operations" and shall carry out operational responsibility for all programs authorized under this Act. There shall also be in such agency two Assistant Directors, each of whom shall be appointed by the Director, and who shall report directly to the Associate Director for Domestic and Anti-Poverty Operations. One such Assistant Director shall be primarily responsible for VISTA and other anti-poverty programs under title I of this Act, and one such Assistant Director shall be primarily responsible for the Older American Volunteer Programs under title II of this Act. There shall also be in such agency three individuals who shall report directly to the Assistant Director who is primarily responsible for the Older American Volunteer Programs under title II of this Act. Each of such individuals shall be primarily responsible for part A, B, or C of such title.

AUTHORITY OF THE DIRECTOR

42 U.S.C. §5042 Sec. 402. In addition to the authority conferred upon the Director by other sections of this Act, the Director is authorized to--

(1) appoint in accordance with the Civil Service laws such personnel as may be necessary to enable the ACTION Agency to carry out its functions, and, except as otherwise provided herein, fix the compensation of such personnel in accordance with chapter 51 of title 5, United States Code except that the number of schedule

C employees, individuals employed on a temporary basis at GS-8 or higher, experts, and consultants shall at no time exceed 8.5 per centum of the total number of individuals employed by the ACTION Agency; (2)(A) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; (B) compensate individuals so employed at rates not in excess of the daily equivalent of the rate payable to a GS-18 employee under section 5332 of such title, including traveltime; (C) allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently, while so employed; and (D) annually renew contracts for such employment under this clause;

(3) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of this Act and, as necessary or appropriate, delegate any of the functions of the Director under this Act and authorize the redelegation thereof subject to provisions to assure the maximum possible liaison between the ACTION Agency and such other agencies at all operating levels, which shall include the furnishing of complete operational information by such other agencies to the ACTION Agency and the furnishing of such information by the ACTION Agency to such other agencies;

(4) with their consent, utilize the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or a political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivision without reimbursement;

(5) accept in the name of the ACTION Agency, and employ or dispose of in furtherance of the purposes of this Act, or of any title thereof, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise;

(6) accept voluntary and uncompensated services;

(7) allocate and expend, or transfer to other Federal agencies for expenditure, funds made available under this Act as the Director deems necessary to carry out the provisions hereof, including expenditure for construction, repairs, and capital improvements;

(8) disseminate, without regard to the provisions of section 3204 of title 39, data and information, in such form as the Director shall deem appropriate to public agencies, private organizations, and the general public;

(9) adopt an official seal, which shall be judicially noticed;

(10) collect or compromise all obligations to or held by the Director and all legal or equitable rights accruing to the Director in connection with the payment of obligations in accordance with sections 3711 and 3716-3718 of Title 31, United States Code.

(11) expend funds made available for purposes of this Act as follows: (A) for printing and binding, in accordance with applicable law and regulations; and (B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Director but the Director shall not utilize the authority contained in this subclause (B)--

(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this Act, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form, or under the conditions in which, it is needed, and

(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of the intention of the Director to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority;

(12) notwithstanding any other provision of law, make grants to or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under this Act (except as provided in section 108 , [42 U.S.C §4958]), which may provide that the agency or organization shall pay all or part of the costs of the program;

(13) establish such policies, standards, criteria, and procedures, prescribe such rules and regulations, enter into such contracts and agreements with public agencies and private organizations and persons, and make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants otherwise authorized under this Act, with necessary adjustments on account of overpayments and underpayments) as are necessary or appropriate to carry out the provisions of this Act; and

(14) generally perform such functions and take such steps, consistent with the purposes and provisions of this Act, as the Director deems necessary or appropriate to carry out the provisions of this Act.

POLITICAL ACTIVITIES

42 U.S.C. §5043 Sec. 403. (a) No part of any funds appropriated to carry out this Act, or any program administered by the ACTION Agency, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or the outcome of any election to any State or local public office, or any voter registration activity, or to pay the salary of any officer or employee of the ACTION Agency, who, in an official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" (when referring to an election for Federal office) has the same meaning given such term by section 301(1) of the Federal Election Campaign Act of 1971 (Public Law 92-225), and the term "Federal office" has

the same meaning given such terms by section 301(3) of such Act.

(b)(1) Programs assisted under this Act shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (A) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (C) any voter registration activity.

(2) No funds appropriated to carry out this Act shall be used by any program assisted under this Act in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except--

(A) 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 representations to such legislative body, committee, or member; or

(B) in connection with an authorization or appropriations measure directly affecting the operation of the program.

(c) The Director, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than thirty days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

SPECIAL LIMITATIONS

42 U.S.C. §5044

Sec. 404. (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this Act is 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.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as the Director determines will further the purposes of this Act.

(f) Notwithstanding any other provision of law, the Director shall assign or delegate any substantial responsibility for carrying out programs under this Act only to persons appointed or employed pursuant to clauses (1) and (2) of section 402 [42 U.S.C. §5042], and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5, United States Code, on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.

(g)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

LABOR STANDARDS FOR FEDERALLY ASSISTED PROJECTS, BUILDINGS, AND WORKS

42 U.S.C. §5046 Sec. 406. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are federally assisted under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5). The Secretary of Labor shall have, with respect to such labor

standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and in section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, ch. 492, as amended; 40 U.S.C. 276c).

REPORTS

42 U.S.C. §5047

Sec. 407. (a) Not later than 60 days after the beginning of each fiscal year, the Director shall prepare and submit to the appropriate committes of Congress a report that shall include --

(1) the annual recruitment plan developed under section 103(c)(4) [42 U.S.C. §4953(c)(4)];

(2) a description of the activities carried out under section 103(b) [42 U.S.C. §4953(b)] during the preceding fiscal year, including a specification of the total number of--

(A) individuals who applied for service as a volunter under this part;

(B) applicants approved for such service;

(C) approved applicants provided an assignment as a volunteer under section 103(b)[42 U.S.C. §4953(b)]; and

(D) volunteers assigned to projects and programs that were outside the original home communities of such volunteers;

(3) a description of efforts undertaken by the Director during the preceding fiscal year to involve individuals, who have formerly served as volunteers under this part, in the activities authorized under section 103(c)[42 U.S.C. §4953(c)];

(4) a description of the number of individuals referred to in paragraph (3) that were involved in the activities referred to in paragraph (3) and the manner of involvement of such individuals; and

(5) a specification of the number and location of employees of the ACTION Agency designated by the Director to assist in carrying out the duties described in subsections (b) and (c) of section 103 [42 U.S.C. §4953] during the preceding fiscal year.

JOINT FUNDING

42 U.S.C. §5048

Sec. 408. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, notwithstanding any other provision of law, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the ACTION Agency, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this Act, which requirement is inconsistent with the similar requirements under or pursuant to this Act.

PROHIBITION OF FEDERAL CONTROL

42 U.S.C. §5049 Sec. 409. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any education institution or school system.

COORDINATION WITH OTHER PROGRAMS

42 U.S.C. §5050 Sec. 410. The Director shall take necessary steps to coordinate volunteer programs authorized under this Act with one another, with community action programs, and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this Act with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this Act. The Director, in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies, shall take all appropriate steps to encourage State and local governments, charitable and service organizations, and private employers (1) to take into account experience in volunteer work in the consideration of applicants for employment; and (2) to make provisions for the listing and description of volunteer work on all employment application forms.

PROHIBITION

42 U.S.C. §5051 Sec. 411. In order to assure that existing Federal agencies are used to the fullest extent possible in carrying out the purposes of this Act, no funds appropriated to carry out this Act shall be used to establish any new department or office when the intended function is being performed by an existing department or office.

SUSPENSION AND TERMINATION OF FINANCIAL ASSISTANCE

42 U.S.C. §5052 Sec. 412. (a) The Director is authorized, in accordance with the provisions of this section, to suspend further payments or to terminate payments under any contract or grant providing assistance under this Act, whenever the Director determines there is a material failure to comply with applicable terms and conditions of any such grant or contract. The Director shall prescribe procedures to insure that--

(1) assistance under this 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 this Act may not be denied unless the recipient has been given (A) 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 (B) 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 or contract award, 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 Agency; and

(4) assistance under this 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 at locations convenient to the recipient agency.

DISTRIBUTION OF BENEFITS BETWEEN RURAL AND URBAN AREAS

42 U.S.C. §5054

Sec. 414. The Director shall adopt appropriate administrative measures to assure that the benefits of and services under this Act will be distributed equitably between residents of rural and urban areas.

APPLICATION OF FEDERAL LAW

42 U.S.C. §5055

Sec. 415. (a) Except as provided in subsections (b),(c), (d), and (e) of this section, volunteers under this Act shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal officers and employees and Federal employment.

(b) Individuals enrolled as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under title I of this Act shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, United States Code, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, United States Code, be deemed employees of the United States,

(4) for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the annual rate of pay of a volunteer enrolled for a period of full-time service under such title I shall be deemed to be that received under the entrance salary for a grade GS-7 employee, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such title I shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director, and subsections (a) and (b) of section 8113 of title 5, United States Code, shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated, and (5) be deemed employees of the United States for the purposes of section 5584 of title 5, United States Code (and stipends and allowances paid under this Act shall be considered as pay for such purposes).

(c) Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of title I of this Act, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government --

(1) for the purposes of any Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of 1980, [22 U.S.C. §3901 et seq.], and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: Provided, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Volunteers serving in programs for periods of service of at least one year under part A of title I of this Act, and volunteers serving for such periods under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations the Director shall prescribe, have successfully completed their periods of service, shall be eligible for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Number 11103 (April 10, 1963).

(e) Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended, shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A,B, or C of title I of this Act.

(f)(1) The remedy--

(A) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of such title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of such person's duties as a volunteer enrolled under title I of this Act shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or such person's estate) whose action or omission gave rise to such claim.

(2) The Attorney General of the United States shall defend any civil action or proceeding brought in any court against any person referred to in paragraph (1) of this subsection (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate supervisor or to whomever is designated by the Director to receive such papers, and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought and to the Attorney General.

(3) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's volunteer assignment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. After removal the

United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a district court of the United States determine on a hearing on a motion to remand held before a trial on the merits that the volunteer whose act or omission gave rise to the suit was not acting within the scope of such person's volunteer assignment, the case shall be remanded to the State court.

(4) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect.

EVALUATION OF PROGRAMS AND PROJECTS

42 U.S.C. §5056 Sec. 416. (a) The Director shall measure and evaluate the impact of all programs authorized by this Act (including the VISTA Literacy Corps which shall be evaluated as a separate program at least once every 3 years); their effectiveness in achieving stated goals, in general, and in relation to their cost, their impact on related programs, and their structure and mechanism for delivery of services. Each program shall be evaluated at least once every three years. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 414 of this Act [42 U.S.C. §5054].

(b) The Director shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this Act. Reports submitted pursuant to section 407 [42 U.S.C. §5047] shall describe the actions taken as a result of evaluations carried out under this section.

(c) In carrying out evaluations under this title, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of such programs and projects.

(d) The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) Not later than December 31, 1988, the Director shall--

(1) evaluate the impact of ACTION Agency programs carried out under title II that relate to services that assist families caring for frail and disabled adult family members and shall include in such evaluation information on--

(A) the range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

(B) the characteristics of volunteers and the skills, training, and supervision necessary to provide various types of volunteer assistance to family caregivers;

(C) administrative costs, including recruitment, training, and supervision costs, associated with volunteer assistance to family caregivers; and

(D) such other issues as may be relevant to provide services to assist family caregivers;

(2) evaluate the impact that volunteers who participate in programs under parts B and C of title II without receiving a stipend have on such programs and shall include in such evaluation--

(A) information on administrative costs associated with such volunteers;

(B) a comparison of the quality of services provided by such volunteers and the quality of services provided by volunteers who receive a stipend under such parts, including the rate of absenteeism and turnover; and

(C) a review of the effect that participation by volunteers who do not receive such stipend have on the administration of such programs; and

(3) submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report sunmmarizing in detail the results of the evaluations made under paragraphs (1) and (2).

(g) The Director is authorized to use such sums as are required, but not to exceed 1 per centum of the funds appropriated under this Act, to conduct program and project evaluations (directly, or by grants or contracts) as required by this Act. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriate therefor) shall be reduced accordingly.

NONDISCRIMINATION

42 U.S.C. §5057 Sec. 417. (a) The Director shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any such program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation. For purposes of this subsection, and for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.), any program, project, or activity to which volunteers are assigned under this Act shall be deemed to be receiving Federal financial assistance.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this Act. The Director shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Section 603 of such Act shall apply with respect to any action taken by the Director to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this Act.

(c)(1) The Director shall apply the nondiscrimination policies and authorities set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), in title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and in the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.) to applicants for enrollment for service as volunteers, and to volunteers serving, under this Act. Any remedies available to individuals under such laws, other than the right of appeal to the Civil Service Commission authorized by section 717 of the Civil Rights Act of 1964, and transferred to the Equal Employment Opportunity Commission by Reorganization Plan Number 1 of 1978, shall be available to such applicants or volunteers.

(2) Not later than 90 days after the date of the enactment of the Domestic Volunteer Service Act Amendments of 1979, the Director, after consultation with the Equal Employment Opportunity Commission with regard to the application of the policies set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and with the Interagency Coordinating Council, established by section 507 of the Rehabilitation Act of 1973 (29 U.S.C. 794c), and the Interagency Committee on Handicapped Employees, established by section 501(a) of the Rehabilitation Act of 1973 (29 U.S.C. 791 (a)), with regard to the application of the policies set forth in Title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and, not later than 90 days after the Secretary of Health and Human Service publishes final general regulations to carry out the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.), and after consultation with the Secretary with regard to the application of the policies set forth in such Act, shall prescribe regulations establishing the procedures for the application of such policies and the provision of such remedies so as to promote the enrollment and service of persons as volunteers without regard to the discriminatory factors described in such laws.

ELIGIBILITY FOR OTHER BENEFITS

42 U.S.C. §5058

Sec. 418. Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to title II of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, workers' compensation, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after the effective date of this Act.

LEGAL EXPENSES

42 U.S.C. §5059 Sec. 419. Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers (or part-time volunteers when such proceeding arises directly out of the performance of activities pursuant to this Act) serving under this Act have been made parties.

REQUIREMENTS FOR PRESCRIBING REGULATIONS

42 U.S.C. §5060 Sec. 420.(a) For purposes of this section --

(1) the term "regulation" means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by the Director pursuant to this Act; and

(2) the term "Committees" means the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(b) Regulations prescribed by the Director or by any other officer of the ACTION Agency, in connection with, or affecting, the administration of any program carried out under this Act shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(c)(1) No proposed regulation prescribed pursuant to this Act for the administration of any program carried out under this Act may take effect until 30 calendar days after it is published in the Federal Register.

(2) During the 30-day period before the date upon which such regulation is to be effective, the Director shall, in accordance with the provisions of section 553 of title 5, United States Code, offer any interested party an opportunity to make comment upon, and take exception to, such regulation and shall reconsider any such regulation upon which comment is made or to which exception is taken.

(d) Concurrently with the publication in the Federal Register of any final regulation, a copy of such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. No such final regulation may take effect until 45 calendar days after such transmission.

(e) Not later than 60 days after the date of the enactment of any Act affecting the administration of any program carried out under this Act, the Director shall submit to the Committees a schedule in accordance with which the Director has planned to prescribe final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be prescribed not later than 180 days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be prescribed in accordance with such schedule. If the Director determines that, due to circumstances unforeseen at the time of the submission of any such schedule, the schedule submitted pursuant to this subsection cannot be met, the Director shall submit a notice of such determination, including a statement of the reasons therefor, to the Committees and shall submit a new schedule which shall then be considered, for the purposes of this subsection, as the schedule originally submitted in connection with the enactment of the Act involved.

DEFINITIONS

42 U.S.C. §5061

Sec. 421. For the purposes of this Act--

(1) the term "Director" means the Director of the ACTION Agency;

(2) the terms "United States" and "States" mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa and, for the purposes of title II of this Act, the Trust Territory of the Pacific Islands;

(3) the term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(4) the term "poor" or "low-income" persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. 2971d): Provided, That in determining who is "poor" or "low-income", the Director shall take into consideration existing poverty guidelines as appropriate to local situations;

(5) the terms "public agencies or organizations" and "Federal, State, or local agencies" shall include 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.

(6) the term "poverty line for a single individual" means such poverty line as established by the Director of the Office of Management and Budget in accordance with section 9902(2) of Title 42, United States Code; and

(7) the term "boarder baby" means an infant described in section 103 of the Abandoned Infants Assistance Act of 1988 (Public Law 100-505; 42 U.S.C. 670 note).

AUDIT

42 U.S.C. §5062 Sec. 422. (a) Each recipient of Federal grants, subgrants, contracts, subcontracts, or loans entered into under this Act other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Director shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Director or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or loans referred to in subsection (a).

REDUCTION OF PAPERWORK

42 U.S.C. §5063 Sec. 423. In order to reduce unnecessary, duplicative, or disruptive demands for information, the Director, in consultation with other appropriate agencies and organizations, shall continually review and evaluate all requests for information made under this Act and take such action as may be necessary to reduce the paperwork required under this Act. The Director shall request only such information as the Director deems essential to carry out the purposes and provisions of this Act.

REVIEW OF PROJECT RENEWALS

42 U.S.C. §5064 Sec. 424. If the executive authority of any State or local government submits to the Director, not later than 30 days before the expiration of any contract or grant to carry out any project under this Act, a statement which objects to the renewal of such contract or grant, then the Director shall (1) review such statement and take it into account in determining whether to renew such contract or grant; and (2) submit to such executive authority a written statement of reasons regarding the Director's determination with respect to such renewal and specifically with respect to any objection so submitted.

TITLE V--AUTHORIZATION OF APPROPRIATIONS

NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

42 U.S.C. §5081

Sec. 501. (a)(1) There is authorized to be appropriated to carry out part A of title I (except section 109, 42 U.S.C. § 4959)), $25,000,000 for fiscal year 1987, $26,000,000 for fiscal year 1988, $27,040,000 for fiscal year 1989, $30,600,000 for fiscal year 1990, $39,900,000 for fiscal year 1991, $47,800,000 for fiscal year 1992, and $56,000,000 for fiscal year 1993.

(2) There is authorized to be appropriated to carry out section 109(c), 42 U.S.C. § 4959(c), and to expand the number of VISTA Literacy Corps volunteers in literacy programs and projects under part A of title I of this Act $2,000,000 for fiscal year 1987, $3,000,000 for fiscal year 1988, $5,000,000 for fiscal year 1989, $6,050,000 for fiscal year 1990, $7,500,000 for fiscal year 1991, $9,000,000 for fiscal year 1992, and $10,500,000 for fiscal year 1993.

(3) There is authorized to be appropriated to carry out section 109(d), 42 U.S.C. § 4959(d), and to expand the number of VISTA Literacy Corps volunteers in literacy programs and projects under part A, title I of this Act $1,000,000 for each of the fiscal years 1987 through 1993.

(b) There is authorized to be appropriated to carry out part B of title I of this Act $1,800,000 for each of the fiscal years 1987, 1988, and 1989, $1,900,000 for fiscal year 1990, $2,000,000 for fiscal year 1991, $2,100,000 for fiscal year 1992, and $2,200,000 for fiscal year 1993.

(c) There is authorized to be appropriated to carry out part C of title I of this Act (other than section 124(b), 42 U.S.C. § 4994(b)), $1,984,000 for each of the fiscal years 1987, 1988, and 1989, $1,100,000 for fiscal year 1990, $1,150,000 for fiscal year 1991, $1,200,000 for fiscal year 1992, and $1,275,000 for fiscal year 1993. In addition to the amounts authorized to be appropriated by the preceding sentence, there is authorized to be appropriated the aggregate sum of $5,500,000 for fiscal years 1987 and 1988 to be made available for drug abuse prevention. In addition to the amounts authorized to be appropriated by the preceding sentences, there are authorized to be appropriated for support of drug abuse prevention $4,000,000 for fiscal year 1989, $5,000,000 for each of the fiscal years 1990 and 1991, $5,250,000 for fiscal year 1992, and $5,500,000 for fiscal year 1993. With respect to amounts appropriated for any fiscal year pursuant to the authorization contained in the preceding sentence, the Director--

A(1) shall use not less than 15 percent and not more than 25 percent of such amounts for purposes of carrying out section 124(b), 42 U.S.C. § 4994(b); and

(2) Except as provided in paragraph (3) and in addition to the amounts authorized to be appropriated pursuant to paragraph (1) there is authorized to be appropriated $2,500,000 for the fiscal year 1992 and such sums as may be necessary for 1993 for Literacy Challenge Grants under section 125.

(3) No funds shall be appropriated pursuant to paragraph (2) in any fiscal year unless--

(A) the funds available in such fiscal year for the VISTA Program under part A of title I are sufficient to provide the years of volunteer service specified for such fiscal year under section 501(d)(1) for the VISTA Program; and

(B) the funds available in such fiscal year for the VISTA Literacy Corps under part A of title I are sufficient to provide at least the same years of volunteer service as were provided in the fiscal year preceding such fiscal year.".

(B) shall ensure that not more than $500,000 is used for program support.

(d)(1) Of the amounts appropriated under this section for parts A, B, and C of title I (other than section 124, 42 U.S.C. § 4994(b)) and for sections 109(c) and 109(d), 42 U.S.C. § § 4959(c) and 4959(d), there shall first be available for part A of title I (other than section 109, 42 U.S.C. § 4959)), an amount not less than the amount necessary to provide--

(A) 2,400 years of volunteer service in fiscal year 1987;

(B) 2,500 years of volunteer service in fiscal year 1988;

(C) 2,600 years of volunteer service in fiscal year 1989;

(D) 2800 years of volunteer service in fiscal year 1990;

(E) 3000 years of volunteer service in fiscal year 1991;

(F) 3200 years of volunteer service in fiscal year 1992; and

(G) 3400 years of volunteer service in fiscal year 1993.

(2) For purposes of paragraph (1), the term "volunteer service" shall include training and other support required under this Act for purposes of part A of title I.

(3) The requirement of paragraph (1)(A) shall not apply unless there is appropriated for title I for fiscal year 1984 an amount in addition to amounts available under Public Law 98-151.

(4)(A) In applying criteria with respect to meeting the number of years of volunteer service under paragraph (1) for a fiscal year, the Director may not exclude the costs of complying with section 105(b)(2), 42 U.S.C. § 4955(b)(2), for each volunteer under this part.

(B) The minimum level of allowances for subsistence required under section 105(b)(2), 42 U.S.C. § 4955(b)(2), to be provided to each volunteer under this part may not be reduced or limited in order to provide for the increase in the number of years of volunteer service specified in paragraph (1) for each of the fiscal years 1990 through 1993.

(C) If the Director determines that funds appropriated to carry out part A of title I of this Act are insufficient to provide for the years of volunteer service as required in paragraph (1), the Director shall, within a reasonable period of time in advance of the date on which such additional funds must be reallocated to satisfy the requirements of such subsection, notify the relevant authorizing and appropriating Committees of Congress. Funds shall be reallocated to part A of title I of this Act from amounts appropriated for part C of such title prior to the reallocation of funds appropriated for other parts.

(e) No part of the funds authorized under subsection (a) may be used to provide volunteers or assistance to any program or project authorized under part B or C of title I, or under title II, unless the program or project meets the antipoverty criteria of part A of title I.

OLDER AMERICAN VOLUNTEER PROGRAMS

42 U.S.C. §5082

Sec. 502.(a) There is authorized to be appropriated not less than the amount appropriated in the previous fiscal year and not more than $34,610,000 for fiscal year 1989, $39,900,000 for fiscal year 1990, $43,900,000 for fiscal year 1991, and $48,300,000 for fiscal year 1992, and $53,100,000 for fiscal year 1993, for the purpose of carrying out programs under part A of title II of this Act.

(b) There is authorized to be appropriated not less than the amount appropriated in the previous fiscal year and not more than $64,900,000 for fiscal year 1989, $70,800,000 for fiscal year 1990, $80,900,000 for fiscal year 1991, $91,700,000 for fiscal year 1992, and $98,200,000 for fiscal year 1993, for the purpose of carrying out programs under part B of title II of this Act.

(c) There is authorized to be appropriated not less than the amount appropriated in the previous fiscal year and not more than $32,170,000 for fiscal year 1989, $36,600,000 for fiscal year 1990, $39,000,000 for fiscal year 1991, $44,700,000 for fiscal year 1992, and $48,700,000 for fiscal year 1993, for the purpose of carrying out part C of title II of this Act.

ADMINISTRATION AND COORDINATION

42 U.S.C. §5084

Sec. 504.(a) There is authorized to be appropriated for the administration of this Act, as authorized in title IV of this Act, $25,312,000 for each of the fiscal years 1987, 1988, and 1989. In addition to the amounts authorized to be appropriated for the administration of this Act by the preceding sentence, there is authorized to be appropriated the aggregate sum of $500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.

(b) For each of the fiscal years 1990 through 1993, there is authorized to be appropriated for the administration of this Act, as authorized in Title IV of this Act 20 percent of the total amount appropriated under sections 501 and 502 (42 U.S.C. §§ 5081, 5082).

AVAILABILITY OF APPROPRIATIONS

42 U.S.C. §5085

Sec. 505. Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this Act or any predecessor authority shall remain available, in accordance with the provisions of this Act, for obligation and expenditure until expended.

TITLE VI--AMENDMENTS TO OTHER LAWS AND REPEALERS

SUPERSEDENCE OF REORGANIZATION PLAN NUMBER 1 OF JULY 1, 1971

Sec. 601. (a) Sections 1, 2(a), 3, and 4 of Reorganization Plan Number 1 of 1971 (July 1, 1971) are hereby superseded.

(b) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Director of the ACTION Agency by sections 2(a) and 4 of such reorganization plan are hereby transferred to the ACTION Agency established by section 401. All grants, contracts, and other agreements awarded or entered into under the authority of such reorganization plan will be recognized under comparable provisions of this Act so that there is no disruption of ongoing activities for which there is continuing authority.

(c) All official actions taken by the Director of the ACTION Agency, the designee of the Director, or any other person under the authority of such reorganization plan which are in force on the effective date of this Act and for which there is continuing authority under the provisions of this Act, and the length of the period of service of volunteers serving or undergoing training under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d) on the effective date of this Act, shall continue in full force and effect until modified, superseded, or revoked by the Director.

(d) All references to ACTION, or the Director of ACTION in any statute, reorganization plan, Executive Order, regulation or other official document or proceeding shall, on and after the effective date of this Act, be deemed to refer to the ACTION Agency established by section 401 and the Director thereof.

(e) No suit, action or other proceeding, and no cause of action, by or against the agency known as ACTION created by such reorganization plan, or any action by any officer thereof acting in an official capacity; shall abate by reason of enactment of this Act.

(f) Persons appointed by the President, by and with the advice and consent of the Senate, to positions requiring such advice and consent under such reorganization plan may continue to serve in the same capacity in the ACTION Agency without the necessity of an additional appointment by the President or further such advice and consent by the Senate.

CREDITABLE SERVICE FOR CIVIL SERVICE RETIREMENT

Sec. 602. Section 8332(b)(7) of title 5, United States Code (relating to creditable service to civil service retirement), is amended by inserting a comma and "or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic

Volunteer Service Act of 1973 (42 U.S.C. 4951, et seq.) after "Economic Opportunity Act of 1964".

REPEAL OF TITLE VIII OF THE ECONOMIC OPPORTUNITY ACT

Sec. 603. Title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d), is hereby repealed.

REPEAL OF TITLE VI OF THE OLDER AMERICANS ACT

Sec. 604. (a) Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3044-3044e), is hereby repealed.

(b) Section 908 of the Older Americans Comprehensive Services Amendments Act of 1973 (Public Law 93-29) is amended by striking out "1973," and "1974," and inserting in lieu thereof "1974," and "1975,", respectively.

Approved October 1, 1973

AMENDMENT TO THE COMMUNITY SERVICES BLOCK GRANT ACT

Sec. 605. (a) Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) is amended--

(1) by striking out "established by the Director of the Office of Management and Budget" and inserting in lieu thereof "defined by the Office of Management and budget based on bureau of Census data"; and

(2) by inserting "For All Urban Consumers" after "Consumer Price Index".

(b) Section 683(c)(1) of the Community Services Block Grant Act (42 U.S.C. 9912(c)(1)) is amended by striking out "section 624" and inserting in lieu thereof "section 624 or 625".

Disadvantaged persons.
Homeless.
42 USC 5091.

TITLE VII - YOUTHBUILD PROJECTS

Sec. 701. STATEMENT OF PURPOSE

It is the purpose of this title --
(1) to provide economically disadvantaged young adults with opportunities for meaningful service to their communities in helping to meet the housing needs of homeless individuals and low-income families; and
(2) to enable economically disadvantaged young adults to obtain the education and employment skills necessary to achieve economic self-sufficiency.

42 USC 5091a.

Sec. 702. AUTHORIZATION OF PROGRAM

(a) FINANCIAL ASSISTANCE. - The Director of the ACTION Agency, in consultation with the Secretary of Labor, may provide grants to pay the Federal share of the cost of carrying out Youthbuild projects in accordance with this title.
(b) FEDERAL SHARE. - The Federal share under subsection (a) for each fiscal year shall not exceed 90 percent.

Real property.
42 USC 5091b.

Sec 703. SERVICE IN CONSTRUCTION AND REHABILITATION PROJECTS

(a) CONSTRUCTION AND REHABILITATION PROJECTS.- Eligible participants serving in Youthbuild projects receiving assistance under this title shall be employed in the construction, rehabilitation, or improvement of real property to be used for purposes of providing --
(1) residential rental housing that is occupied primarily by, or available for occupancy primarily by, homeless individuals and low-income families;
(2) transitional housing for homeless individuals;
(3) facilities for the provision of health, education, and other social services to low-income families, including --
- (A) senior citizen centers;
- (B) youth recreation centers;
- (C) Head Start or child or adult day care centers; and
- (D) community health centers.

(b) REQUIREMENTS FOR COMMUNITY FACILITIES.- No assistance may be provided under this title to support the construction, rehabilitation, or improvement of real property to be used to provide facilities described in subsection (a) unless the property --
(1) is used principally by or for the benefit of low-income families;
(2) is owned and occupied solely by public or private non-profit entities; and

(3) is located in census tracts, or identifiable neighborhoods within census tracts, in which the median family income is not more than 80 percent of the median family income of the area in which the facility is located, as such media family income and area are determined for the purposes of assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 437f).

(c) RESTRICTION OF USE.- Participants under this title may not be employed in the construction, operation, or maintenance of any facility for sectarian instruction or religious worship.

42 USC 5091c. Sec. 704. EDUCATION AND JOB TRAINING SERVICES

(a) IN GENERAL.- Assistance provided under this title shall be used by each Youthbuild project to provide to participants the following:

(1) SERVICE OPPORTUNITIES.- Service opportunities in the construction or rehabilitation projects described in section 703, 42 U.S.C. 9 which shall be integrated with appropriate skills training and coordinated with, to the extent feasible, preapprenticeship and apprenticeship programs.

(2) EDUCATIONAL SERVICES.- Services and activities designed to meet the educational needs of participants, including--

(A) basic skills instruction and remedial education;

(B) bilingual education for individuals with limited English proficiency; and

(C) secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent.

(3) PERSONAL AND PEER SUPPORTS.- Counseling services and other activities designed to --

(A) ensure that participants overcome personal problems that would interfere with their successful participation; and

(B) develop a strong, mutually supportive peer context in which values, goals, cultural heritage, and life skills can be explored and strengthened.

(4) LEADERSHIP DEVELOPMENT.- Opportunities to develop the decisionmaking, speaking, negotiating, and other leadership skills of participants, such as the establishment and operation of a youth council with meaningful decisionmaking authority over aspects of the project.

(5) PREPARATION FOR AND PLACEMENT IN UNSUBSIDIZED EMPLOYMENT.- Activities designed to maximize the value of participants as future employees and to prepare participants for seeking, obtaining, and retaining unsubdized employment.

(6) NECESSARY SUPPORT SERVICES.- To provide support services and need-based stipends necessary to enable individuals to participate in the program and, for a period not to exceed 6 months after completion of training, to assist participants through support services in retaining employment.

(b) CONDITIONS.- The provision of service opportunities to participants in Youthbuild projects shall be made conditional upon attendance and participation by such individuals in the educational services and activities described in subsection (a). The duration of participation for each individual in educational services and activities shall be at least equal to the total number of hours for which a participant serves and is paid wages by a Youthbuild project.

42 USC 5091d

Sec. 705. USES OF FUNDS.

(a) FUNDS.- Funds provided under this title may be used only for activities that are in addition to activities that would otherwise be available in the absence of such funds.

(b) ASSISTANCE CRITERIA.- Assistance provided to each Youthbuild project under this title shall be used only for --

(1) education and job training services and activities described in paragraphs (2), (3), (4), (5), and (6) of section 704(a), 42 U.S.C. 5091c(a) of this title

(2) wages and benefits paid to participants in accordance with sections 704(a) and 706, 42 U.S.C. 95 and;

(3) administrative expenses incurred by the project in an amount not to exceed 10 percent of the amount of assistance provided to the project under this title unless such project receives a waiver, on the basis of substantial need, granted by the Director to use an amount not to exceed 15 percent of the amount of such assistance provided under this title for such purposes.

42 USC 5091e

Sec. 706. ELIGIBLE PARTICIPANTS

(a) IN GENERAL.- Except as provided in subsection (b) an individual shall be eligible to participate in a Youthbuild project receiving assistance under this title if such individual is --

(1) 16 to 24 years of age, inclusive;

(2) economically disadvantaged; and

(3) an individual who has dropped out of high school whose reading and mathematics skills are at or below the 8th grade level.

(b) EXCEPTIONS.- Not more than 25 percent of the participants in a Youthbuild project receiving assistance under this title may be individuals who do not meet the requirements of subsection (a).
(c) PARTICIPATION LIMITATION.- Any eligible individual selected for full-time participation in a Youthbuild project may participate full-time for a period of not less than 6 months and not more than 18 months.

42 USC 5091f.

Sec. 707. LIVING ALLOWANCES

(a) AMOUNT OF ALLOWANCE.-
(1) Each participant in a full-time Youthbuild program that receives assistance under this title shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 673(2) of the Community Service Block Grant Act (42 U.S.C. 9902(2)).
(2) NON-FEDERAL SOURCES.- Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.
(3) REDUCTION IN EXISTING PROGRAM BENEFITS.- Nothing in this section shall be construed to require a program in existence on the date of enactment of this title to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipend, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.
(b) NONDISCRIMINATION.-
(1) IN GENERAL.- Except as provided in paragraph (2), an individual with responsibility for the operation of a Youthbuild project shall not discriminate on the basis of religion against a participant or a member of the project staff who is paid with funds under this title.
(2) EXCEPTION.- Paragraph (1) shall not apply to the employment, with funds provided under this title, of any member of the staff of a Youthbuild project who was employed with the organization operating the project on the date the grant funded under this title was awarded.

Colleges and universities.
42 USC 5091g.

Sec. 708. CONTRACTS

Each Youthbuild project shall carry out the services and activities under this title directly or through arrangements or under contracts with administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act (29 U.S.C. 1501(b)(1)(B)), with State and local educational agencies, institutions of higher education, State and local housing development agencies, and with other public agencies and private organizations.

42 USC 5091h.

Sec. 709. PERFORMANCE STANDARDS

(a) IN GENERAL.- The Director, in consultation with the Secretary of Labor, shall prescribe standards for evaluating the performance of Youthbuild projects receiving assistance under this title, including the following factors:
(1) Placement in unsubsidized employment.
(2) Retention in unsubsidized employment.
(3) An increase in earnings.
(4) Improvement of reading and other basic skills.
(5) Attainment of a high school diploma or its equivalent.
(6) Completion of projects providing a benefit to the community.
(b) VARIATIONS.- The Director shall prescribe variations to the standards determined under subsection (a) by taking into account the economic conditions of the areas in which Youthbuild projects are located and appropriate special characteristics, such as the extent of English language proficiency and offender status of Youthbuild participants.

42 USC 5091i.

Sec. 710. APPLICATIONS

(a) SUBMISSION.- To apply for a grant under this title, an eligible entity shall submit an application to the Director in accordance with procedures established by the Director.
(b) CRITERIA.- Each such application shall --
(1) describe the educational services, job training supportive services, service opportunities, and other services and activities that will be provided to participants;
(2) describe the proposed construction of rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;
(3) describe the manner in which eligible youths will be recruited and selected, including a description of arrangements which will be made with community-based organizations, State and local educational agencies, public assistance agencies, the courts of jurisdiction for status and youth offenders, homeless shelters and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;
(4) describe the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children);

(5) describe how the proposed project will be coordinated with other Federal, State, and local activities, including vocational, adult and bilingual education programs, job training supported by funds available under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and the Family Support Act of 1988, housing and economic development, and programs that receive assistance under section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. § 5306);
(6) provide assurances that there will be a sufficient number of supervisory personnel on the project and that the supervisory personnel are trained in the skills needed to carry out the project;
(7) describe activities that will be undertaken to develop the leadership skills of participants;
(8) set forth a detailed budget and describe the system of fiscal controls and auditing and accountability procedures that will be used to ensure fiscal soundness; and
(9) set forth assurances, arrangements, and conditions the Director determines are necessary to carry out this title.

42 USC 5091j. Sec. 711. SELECTION OF PROJECTS

In approving applications for assistance under this title, the Director shall give priority to applicants that demonstrate the following:
(1) POTENTIAL FOR SUCCESS.- The greatest likelihood of success, as indicated by such factors as the past experience of an applicant with housing rehabilitation or construction, youth and youth education and employment training programs, management capacity, fiscal reliability, and community support.
(2) NEED.- Have the greatest need for assistance, as determined by factors such as --
(A) the degree of economic distress of the community from which participants would be recruited, including --
(i) the extent of poverty;
(ii) the extent of youth unemployment; and
(iii) the number of individuals who have dropped out of high school; and
(B) the degree of economic distress of the locality in which the housing would be rehabilitated or constructed, including --
(i) objective measures of the incidence of homelessness;
(ii) the relation between the supply of affordable housing for low-income families and the number of such families in the locality;
(iii) the extent of housing overcrowding; and

42 USC 5091k.

Sec. 712. MANAGEMENT AND TECHNICAL ASSISTANCE

(a) GENERAL ADMINISTRATION.- The program established under this title shall be administered by an individual with significant experience in the administration of youth service programs that explicitly attempt to enhance the basic academic and vocational skills of participants in such programs. The Director is authorized to delegate any of the functions of the Director under this title as may be appropriate to the Secretary of Labor and provide for the performance of any of the provisions of this title on a cost-reimbursable basis by the Secretary of Labor.
(b) DIRECTOR ASSISTANCE.- The Director may enter into contracts with a qualified public or private nonprofit agency to provide assistance to the Director in the management, supervision, and coordination of Youthbuild projects receiving assistance under this title.

Government contracts. Manpower training programs. Nonprofit organizations.

(c) SPONSOR ASSISTANCE.- The Director shall enter into contracts with a qualified public or private nonprofit agency to provide appropriate training, information, and technical assistance to sponsors of projects assisted under this title.
(d) APPLICATION PREPARATION.- Technical assistance may also be provided in the development of project proposals and the preparation of applications for assistance under this title to eligible entities which intend or desire to submit such applications. Community-based organizations shall be given first priority in the provision of such assistance.
(e) RESERVATION OF FUNDS.- The Director shall reserve 5 percent of the amounts available in each fiscal year under section 715 to carry out subsections (c) and (d).

42 USC 5091*l*.

Sec. 713. DEFINITIONS

For purposes of this title:
(1) COMMUNITY-BASED ORGANIZATIONS.- The term "community-based organizations" has the meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).
(2) DIRECTOR.- The term "Director" means the Director of the ACTION agency.
(3) DROPPED OUT OF HIGH SCHOOL.- The term "individual who has dropped out of high school" means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma, but does not include any individual who has attended secondary school at any time during the preceding 6 months.

(4) ECONOMICALLY DISADVANTAGED.- The term "economically disadvantaged" has the meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

(5) ELIGIBLE ENTITY.- The term "eligible entity" means a public or private nonprofit agency such as --

(A) community-based organizations;

(B) administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act (29 U.S.C. § 1501(b)(1)(B));

(C) community action agencies;

(D) State and local housing development agencies;

(E) State and local youth service and conservation corps; and

(F) any other entity that is eligible to provide education and employment training under other Federal employment training programs.

(6) HOMELESS INDIVIDUAL.- The term "homeless individual" has the meaning given such term in section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302).

(7) HOUSING DEVELOPMENT AGENCY.- The term "housing development agency" means any agency of a State or local government, or any private nonprofit organization that is engaged in providing housing for the homeless or low-income families.

(8) INSTITUTION OF HIGHER EDUCATION.- The term "institution of higher education" has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(9) LIMITED ENGLISH PROFICIENCY.- The term "limited English proficiency" has the meaning given such term in section 7003 of the Bilingual Education Act (20 U.S.C. 3223).

(10) LOW-INCOME FAMILY.- The term "low-income family" has the meaning given the term "lower income families" in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)).

(11) OFFENDER.- The term "offender" means any adult or juvenile with a record of arrest or conviction for a criminal offense.

(12) QUALIFIED NONPROFIT AGENCY.- The term "qualified public or private nonprofit agency" means any nonprofit agency that has significant prior experience in the operation of projects similar to the Youthbuild program authorized under this title and that has the capacity to provide effective technical assistance under this title.

(13) RESIDENTIAL RENTAL PURPOSES.- The term "residential rental purposes" includes a cooperative or mutual housing facility that has a resale structure that enables the cooperative to maintain affordability for low-income individuals and families.

(14) SERVICE OPPORTUNITY.- The term "service opportunity" means the opportunity to perform work in return for usages and benefits in the construction or rehabilitation of real property in accordance with this title.

(15) STATE.- The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

(16) TRANSITIONAL HOUSING.- The term "transitional housing" means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within a reasonable amount of time. Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

(17) YOUTHBUILD PROJECT.- The term "Youthbuild project" means any project that receives assistance under this title and provides disadvantaged youth with opportunities for service, education, and training in the construction or rehabilitation of housing for homeless and other low-income individuals.

42 USC 5091m Sec. 715. REGULATIONS

The Director shall issue any regulations necessary to carry out this title.

42 USC 5091n Sec. 716. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $1,000,000 for fiscal year 1991, $2,000,000 for fiscal year 1992, and $5,000,000 for fiscal year 1993.

THE FEDERAL DOMESTIC VOLUNTEER AGENCY · USA ·

A C T I O N

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

August 27, 1993

MEMORANDUM

TO: Shirley Sachi Sagawa
Sarah Whitman
Office of National Service

FROM: Judith A. Denny
Inspector General

SUBJECT: Draft Insert for Corporation Business Plan: Investigative and Audit Functions

Having read the Conference Report [to accompany H.R. 2010] and, in particular, the requirements for the Corporation business plan, I thought it may be helpful to draft the portion on investigative and audit functions for your review.

As you are aware, section 204(b)(2) of the bill (as approved by the conference committee) requires the Corporation to include in its business plan a description of plans to (A) ensure continuity in the investigative and audit functions of ACTION programs and (B) carry out investigative and audit functions of Corporation programs. With that in mind, I have drafted a one-page insert for the business plan that tracks the language of the statute. Not being certain about the amount of further information required, I have added only a functional statement and an organizational chart at this point. The concept behind the attached draft is twofold:

1. to ensure jurisdiction of the Corporation OIG over ACTION grants, programs, and operations during the transition period and

2. to minimize duplication of functions in the Corporation by not having two Offices of Inspector General during the transition period.

While the language of the conference report allows two OIG's during the transition period, I believe that having one office--with combined jurisdiction and shared resources--at the outset is preferable.

I am available to discuss the draft at your convenience.

cc: Rick Allen
Jack Lew
Gary Kowalczyk
Catherine Milton
Bob Currie
Stewart Davis
Terry Russell
Phyllis Beaulieu

DRAFT

(2) Investigative and audit functions.

(A) The Corporation will ensure continuity during the transition period, and after the transition period, in the investigative and audit functions carried out by the Inspector General of ACTION prior to such period, consistent with the Inspector General Act of 1978, by

(i) assigning responsibility for investigative and audit functions of ACTION grants, programs, and operations to the Office of the Inspector General (OIG) of the Corporation on October 1, 1993,

(ii) assigning all ACTION OIG personnel and resources to the OIG of the Corporation on October 1, 1993, and

(iii) transferring the organizational framework of the ACTION OIG (left behind by operation of (i) and (ii) above) to the Corporation, and terminating ACTION as a designated Federal entity, in accordance with section 202(g) of the National and Community Service Trust Act of 1993, on the effective date as prescribed by law.

(B) The Corporation will carry out investigative and audit functions and implement financial management controls regarding programs carried out by the Corporation after October 1, 1993, consistent with the Inspector General Act of 1978, by

(i) establishing an Office of the Inspector General at the Corporation, on October 1, 1993, with full authorities granted by the Inspector General Act of 1978,

(a) headed by a Presidentially appointed, Senate confirmed, Inspector General (IG), with an Acting IG designated to head the office until the President has appointed an IG and the Senate has had the opportunity to act on the nomination,

(b) utilizing the space, equipment, files, and systems of the ACTION OIG until such time as the Corporation OIG has acquired or converted these resources, and

(ii) using Government Auditing Standards (including the General Accounting Office "Yellow Book") and following all pertinent OMB Circulars and government-wide financial management regulations to audit Corporation grants, programs, and operations as well as ACTION grants, programs, and operations.

Note: See attached functional statement and organizational chart for the Office of the Inspector General of the Corporation.

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FUNCTIONAL STATEMENT

OFFICE OF THE INSPECTOR GENERAL

1. MISSION. The Office of Inspector General (OIG) provides leadership and coordination and recommends policies for activities designed to prevent and detect fraud, waste, abuse, and mismanagement of federal funds and promote economy and efficiency within the Corporation's programs and operations. The Inspector General Act of 1978, as amended, (5 U.S.C. App.) mandates the OIG's mission and statutory authority.

2. ORGANIZATION. The Inspector General reports to the Chief Executive Officer of the Corporation. A Deputy Inspector General, a Counsel to the Inspector General, and three Assistant Inspectors General (for Audit, Investigations, and Administration and Operational Reviews) report to the Inspector General.

3. FUNCTIONS.

   a. Performs and directs financial, compliance, and performance audits of all Corporation programs and operations. Ensures that work contracted with nonfederal auditors complies with standards established by the Comptroller General of the United States and relevant OMB circulars. Reviews work of independent auditors who audit grantees and contractors under OMB circulars A-128 and A-133. Issues annual Audit Plan.

   b. Investigates alleged violations of Corporation policies and procedures, criminal or civil statutes, and other irregularities in Corporation programs and operations, including those of employees, contractors, and grantees. As required, may issue subpoenas, administer oaths or affirmations, and take affidavits during the course of an audit or investigation.

   c. Reviews and makes recommendations on existing and proposed legislation and regulations based on potential impact on the economy, efficiency, and effectiveness of Corporation programs and operations.

   d. Monitors the management of the Corporation's audit resolution tracking system, ensuring that follow-up action(s) taken in response to proposed recommendations are adequate and timely.

DRAFT

e. Acts as liaison between the Corporation and the General Accounting Office, other Government agencies, appropriate private entities, and interagency organizations with respect to audit and investigative matters.

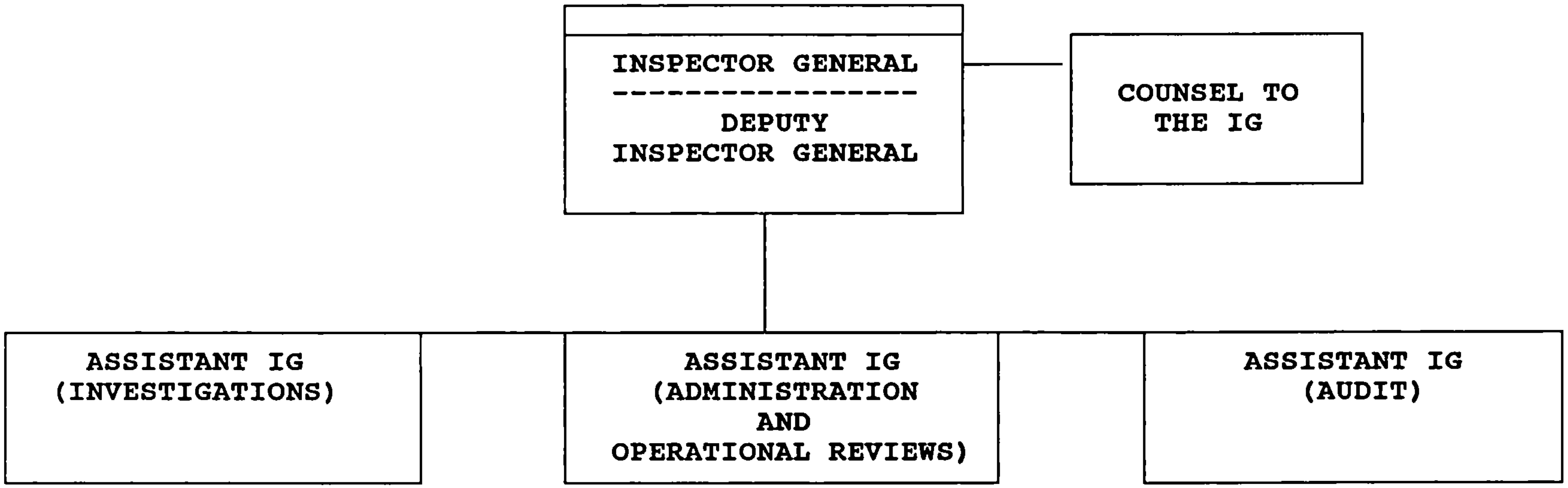
f. Coordinates other activities to promote economy and efficiency in the administration of, or to prevent and detect fraud, waste, and abuse in Corporation programs and operations. These activities include but are not limited to: designing training materials, making presentations, reviewing and commenting on policy guidelines, and providing technical advice to Corporation management officials on internal controls and other economy and efficiency issues.

g. Submits semiannual reports to the Chief Executive Officer and the Congress. Keeps the Chief Executive Officer and the Congress fully and currently informed about problems and deficiencies relating to the administration of Corporation programs and operations and the necessity for, and the progress of, corrective action.

APPROVED: ______________________________ DATE: __________

OFFICE OF THE INSPECTOR GENERAL

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE



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A C T I O N
1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

August 25, 1993

MEMORANDUM

TO: C. Richard Allen
Deputy Assistant to the President
Deputy Director, Office of National Service

FROM: Judith A. Denny
Inspector General

SUBJECT: Questions Concerning the Corporation for National and Community Service

This memorandum responds to the two questions you asked yesterday concerning authority of the Chief Executive Officer (CEO) of the Corporation for National and Community Service. Precise answers will depend upon further information about the details surrounding the issues.

1. *May the CEO appoint a business advisory council which will act to "stimulate local contributions?" What are the rules governing such a council?*

The CEO has broad authority to appoint employees, consultants, advisory committees, and other personnel. He also has authority to accept the voluntary services of individuals outside the Corporation. When the exact expectations of the business council to which you refer are spelled out, there are several references that can be consulted.

Section 195(f) of the National and Community Service Act of 1990, as amended, (NCSA) authorizes the CEO, upon the recommendation of the Board, to establish advisory committees in the Corporation to advise the Board on a wide variety of national service issues. (See Attachment A.)

Assuming that the business advisory council will perform any of these types of advisory services, its activities will be governed by the Federal Advisory Committee Act (FACA). Although Section 192(h) of NCSA states that the Federal Advisory Committee Act does not apply <u>with respect to the Board</u>, it seems clear that FACA <u>does</u> apply to advisory committees established under Section 195(f).

The Federal Advisory Committee Act is codified at 5 U.S. Code appendix 2. (See Attachment B.) Implementation of the Act is under the authority and responsibility of the General Services Administration (GSA), which has promulgated regulations at 41 C.F.R. Part 101-6. (See Attachment C.)

If you determine that the council is not performing activities which are "advisory" in nature, FACA may not apply. For example, if the Council is formed specifically to assist the Corporation in its fund-raising efforts, the council members may be considered "volunteers" under section 196 of NCSA. Section 196(a)(1) allows the Corporation to solicit and accept the voluntary services of individuals to assist the Corporation in carrying out the duties of the Corporation. (Soliciting and accepting donations of money or property is specifically authorized as a Corporation activity, as will be seen below.)

However, these "volunteers" are not to be considered Federal employees (with certain exceptions) and may not carry out any "inherently governmental function." An inherently governmental function is defined as any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government. This includes any 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.

The CEO is required to promulgate regulations to carry out the provisions regarding volunteers and the prohibition on performing inherently governmental functions. (See Attachment D.)

Finally, as mentioned above, the Corporation is authorized in Section 196(a)(2) to "solicit, accept, hold, administer, use, and dispose of" donations of money or property, to be used in furtherance of the purposes of the NCSA. Donations accepted under this authority are to be used as nearly as possible in accordance with the terms of the donation. The CEO is required to establish written rules regarding the solicitation, acceptance, and use of these donations. (See Attachment D.)

2. *Under the proposed National Service Trust Act of 1993, can the Corporation make grants or awards non-competitively?*

With the exception of the state formula allotments, all grants made under Section 121 of the National and Community Service Act of 1990, as amended, (NCSA) must be made competitively. All grants made under Subparts A, B, and C of Title II of the Domestic Volunteer Service Act of 1973, as amended, (DVSA) must also be made competitively. However, there are several types of grants and awards that may be made by the Corporation through a regulated process--by publishing established criteria--but not through the standard competitive process. For example:

a. Under the NCSA, Part I,

   (1) training and technical assistance grants under Section 125, Subtitle C,

   (2) support for State Commissions, disaster service, and challenge grants for national service programs, under Section 126, Subtitle C,

   (3) all grants under Subtitle H--Investment for Quality and Innovation,

   (4) educational awards under Subtitle D,

b. Under the DVSA,

   (1) grants under $100,000 under Part C of Title I of the DVSA,

   (2) grants under Part E of Title II of the DVSA, and

   (3) project approval for VISTA volunteers.

Since we discussed the application and approval process for VISTA projects, I have attached more specific information on that subject. ACTION has awarded a few VISTA grants, in which the Government makes a grant to a sponsor, and the sponsor pays the volunteers directly. They are made competitively. However, the normal VISTA project approval is an ongoing process that is based on established criteria to assure equal consideration, but is not a competitive process. Sometimes, small transportation and supervision grants are negotiated between ACTION and the sponsor according to need. (See Attachment E.)

I have discussed these issues with both Stewart Davis and Terry Russell. If you have any questions, or wish to discuss further, please let me know.

Attachments
- A Section 195 of NCSA
- B Federal Advisory Committee Act (FACA)
- C FACA Regulations
- D Section 196 of NCSA
- E VISTA Project Approval Process

cc: Jack Lew
Gary Kowalczyk
Catherine Milton
Stewart Davis
Terry Russell

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Divider Title: **ATTACHMENT A**

"(D) ASSISTANCE FOR DISTRESSED AREAS.—The evaluating entity shall also determine the amount of assistance provided under section 121 during the period covered by the report that has been expended for projects conducted in areas of economic distress described in section 133(c)(6).

"(E) DEFINITIONS.—As used in this paragraph:

"(i) INDEPENDENT.—The term 'independent' has the meaning given the term in section 480(d) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(d)).

"(ii) TOTAL INCOME.—The term 'total income' has the meaning given the term in section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)).

"SEC. 194. OFFICERS.

"(a) MANAGING DIRECTORS.—

"(1) IN GENERAL.—There shall be in the Corporation 2 Managing Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report to the Chief Executive Officer.

"(2) COMPENSATION.—The Managing Directors shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(3) DUTIES.—The Corporation shall determine the programs for which the Managing Directors shall have primary responsibility and shall establish the divisions of the Corporation to be headed by the Managing Directors.

"(b) INSPECTOR GENERAL.—

"(1) OFFICE.—There shall be in the Corporation an Office of the Inspector General.

"(2) APPOINTMENT.—The Office shall be headed by an Inspector General, appointed in accordance with the Inspector General Act of 1978.

"(3) COMPENSATION.—The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(c) CHIEF FINANCIAL OFFICER.—

"(1) OFFICE.—There shall be in the Corporation a Chief Financial Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) COMPENSATION.—The Chief Financial Officer shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(3) DUTIES.—The Chief Financial Officer shall—

"(A) report directly to the Chief Executive Officer regarding financial management matters;

"(B) oversee all financial management activities relating to the programs and operations of the Corporation;

"(C) develop and maintain an integrated accounting and financial management system for the Corporation, including financial reporting and internal controls;

"(D) develop and maintain any joint financial management systems with the Department of Education necessary to carry out the programs of the Corporation; and

"(E) direct, manage, and provide policy guidance and oversight of the financial management personnel, activities, and operations of the Corporation.

"(d) ASSISTANT DIRECTORS FOR VISTA AND NATIONAL SENIOR VOLUNTEER CORPS.—

"(1) APPOINTMENT.—One of the Managing Directors appointed under subsection (a) shall, in accordance with applicable provisions of title 5, United States Code, appoint 4 Assistant Directors who shall report directly to such Managing Director, of which—

"(A) 1 Assistant Director shall be responsible for programs carried out under parts A and B of title I of the Domestic Volunteer Service Act of 1973 (the Volunteers in Service to America (VISTA) program) and other antipoverty programs under title I of that Act;

"(B) 1 Assistant Director shall be responsible for programs carried out under part A of title II of that Act (relating to the Retired Senior Volunteer Program);

"(C) 1 Assistant Director shall be responsible for programs carried out under part B of title II of that Act (relating to the Foster Grandparent Program); and

"(D) 1 Assistant Director shall be responsible for programs carried out under part C of title II of that Act (relating to the Senior Companion Program).

"(2) EFFECTIVE DATE FOR EXERCISE OF AUTHORITY.—Each Assistant Director appointed pursuant to paragraph (1) may exercise the authority assigned to each such Director only after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993.

"SEC. 195. EMPLOYEES, CONSULTANTS, AND OTHER PERSONNEL.

"(a) EMPLOYEES.—Except as provided in subsection (b), section 194(d), and section 8E of the Inspector General Act of 1978, the Chief Executive Officer shall, in accordance with applicable provisions of title 5, United States Code, appoint and determine the compensation of such employees as the Chief Executive Officer determines to be necessary to carry out the duties of the Corporation.

"(b) ALTERNATIVE PERSONNEL SYSTEM.—

"(1) AUTHORITY.—The Chief Executive Officer may designate positions in the Corporation as positions to which the Chief Executive Officer may make appointments, and for which the Chief Executive Officer may determine compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, to the extent the Chief Executive Officer determines that such a designation is appropriate and desirable to further the effective operation of the Corporation. The Chief Executive Officer may provide for appointments to such positions to be made on a limited term basis.

"(2) APPOINTMENT IN THE COMPETITIVE SERVICE AFTER EMPLOYMENT UNDER ALTERNATIVE PERSONNEL SYSTEM.—The Director of the Office of Personnel Management may grant competitive status for appointment to the competitive service, under such conditions as the Director may prescribe, to an employee who is appointed under this subsection and who is separated from the Corporation (other than by removal for cause).

"(3) SELECTION AND COMPENSATION SYSTEM.—

"(A) ESTABLISHMENT OF SYSTEM.—The Chief Executive Officer, after obtaining the approval of the Director of the Office of Personnel Management, shall issue regulations establishing a selection and compensation system for employees of the Corporation appointed under paragraph (1). In issuing such regulations, the Chief Executive Officer shall take into consideration the need for flexibility in such a system.

"(B) APPLICATION.—The Chief Executive Officer shall appoint and determine the compensation of employees in accordance with the selection and compensation system established under subparagraph (A).

"(C) SELECTION.—The system established under subparagraph (A) shall provide for the selection of employees—

"(i) through a competitive process; and

"(ii) on the basis of the qualifications of applicants and the requirements of the positions.

"(D) COMPENSATION.—The system established under subparagraph (A) shall include a scheme for the classification of positions in the Corporation. The system shall require that the compensation of an employee be determined in part on the basis of the job performance of the employee, and in a manner consistent with the principles described in section 5301 of title 5, United States Code. The rate of compensation for each employee compensated under the system shall not exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(c) CORPORATION REPRESENTATIVE IN EACH STATE.—

"(1) DESIGNATION OF REPRESENTATIVE.—The Corporation shall designate 1 employee of the Corporation for each State or group of States to serve as the representative of the Corporation in the State or States and to assist the Corporation in carrying out the activities described in this Act in the State or States.

"(2) DUTIES.—The representative designated under this subsection for a State or group of States shall serve as the liaison between—

"(A) the Corporation and the State Commission that is established in the State or States;

"(B) the Corporation and any subdivision of a State, Indian tribe, public or private nonprofit organization, or institution of higher education, in the State or States, that is awarded a grant under section 121 directly from the Corporation; and

"(C) after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993, the State Commission and the Corporation employee responsible for programs under the Domestic Volunteer Service Act of 1973 in the State, if the employee is not the representative described in paragraph (1) for the State.

"(3) MEMBER OF STATE COMMISSION.—The representative designated under this subsection for a State or group of States shall also serve as a member of the State Commission established in the State or States, as described in section 178(c)(3).

"(4) COMPENSATION.—If the employee designated under paragraph (1) is an employee whose appointment was made pursuant to section 195(b), the rate of compensation for such employee may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5, United States Code.

"(d) CONSULTANTS.—The Chief Executive Officer may procure the temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5, United States Code.

"(e) DETAILS OF PERSONNEL.—The head of any Federal department or agency may detail on a reimbursable basis, or on a nonreimbursable basis for not to exceed 180 calendar days during any fiscal year, as agreed upon by the Chief Executive Officer and the head of the Federal agency, any of the personnel of that department or agency to the Corporation to assist the Corporation in carrying out the duties of the Corporation under this Act. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

"(f) ADVISORY COMMITTEES.—

"(1) ESTABLISHMENT.—The Chief Executive Officer, acting upon the recommendation of the Board, may establish advisory committees in the Corporation to advise the Board with respect to national service issues, such as the type of programs to be established or assisted under the national service laws, priorities and criteria for such programs, and methods of conducting outreach for, and evaluation of, such programs.

"(2) COMPOSITION.—Such an advisory committee shall be composed of members appointed by the Chief Executive Officer, with such qualifications as the Chief Executive Officer may specify.

"(3) EXPENSES.—Members of such an advisory committee may be allowed travel expenses as described in section 192A(d).

"(4) STAFF.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Chief Executive Officer is authorized to appoint and fix the compensation of such staff as the Chief Executive Officer determines to be necessary to carry out the functions of the advisory committee, without regard to—

"(i) the provisions of title 5, United States Code, governing appointments in the competitive service; and

"(ii) the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(B) COMPENSATION.—If a member of the staff appointed under subparagraph (A) was appointed without regard to the provisions described in clauses (i) and (ii) of subparagraph (A), the rate of compensation for such member may not exceed the maximum rate of basic pay payable for GS–13 of the General Schedule under section 5332 of title 5, United States Code.

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ATTACHMENT B

Divider Title: ______________________________

APPENDIX 2

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94–409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg.Plan No. 1, § 5F, 42 F.R. 56101, 91 Stat. 1634; Pub.L. 96–523, § 2, Dec. 12, 1980, 94 Stat. 3040; Pub.L. 97–375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.

LAW REVIEW COMMENTARIES

Advisers and secrets: The role of agency confidentiality in the Federal Advisory Committee Act. James T. O'Reilly, 13 N.Ky.L.Rev. 27 (1986).

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

CROSS REFERENCES

Pacific Salmon Commission, this Act not applicable to consultations by Commissioners and Panel members, see section 3632(h) of Title 16, Conservation.

LAW REVIEW COMMENTARIES

Federal facilities and environmental compliance. Toward a solution. Stan Millan, 36 Loy L.Rev 319 (1990).

NOTES OF DECISIONS

1. Disclosure of membership

This Act requires that the names of members of the Humanities Panel of the National Endowment for the Humanities be made available to the public by subgroup, but does not require that such disclosure occur until after the particular subgroup's work has been completed. 1980 (Counsel-Inf. Op) 4B Op O.L.C. 743.

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11686

Ex.Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, set out as a note under this section, which related to committee management, was superseded by Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, set out as a note under this section.

EXECUTIVE ORDER NO. 11769

Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, formerly set out as a note under this section, which related to committee management, was revoked by Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out as a note under this section.

EXECUTIVE ORDER NO. 12024

Dec. 1, 1977, 42 F.R. 61445

TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [section 581c of Title 31, Money and Finance], and Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix II of this title], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977 [set out in Appendix II of this title], it is hereby ordered as follows:

Section 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix II of this title], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C.App. I) [this Appendix], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

Sec. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6(c) of that Act [section 6(c) of this Appendix] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

Sec. 4. Executive Order No. 11769 of February 21, 1974 is hereby revoked.

Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

Sec. 6. This Order shall be effective November 20, 1977

JIMMY CARTER

§ 3. Definitions

For the purpose of this Act—

(1) The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of Title 5.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Commission on Government Procurement

The Commission on Government Procurement, referred to in par (2)(iii), terminated Apr. 30, 1973, pursuant to Pub.L. 91-129, set out as a note under section 251 of Title 41, Public Contracts.

Transfer of Functions

"'Administrator' means Administrator of General Services" was substituted for "'Director' means Director of the Office of Management and Budget" in par. (1), pursuant to Reorg. Plan No 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

NOTES OF DECISIONS

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1. Purpose

Purpose of Federal Advisory Committee Act is to control advisory committee process and to open to public scrutiny manner in which government agencies obtain advice from private individuals and groups Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary, D.D C.1986, 648 F Supp 1353

This Appendix was intended to apply to committees created by agencies and to those not originally created by agencies but subsequently used by them as advisory committees Center for Auto Safety v Tiemann, D C D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F 2d 689, 188 U S App D C 426

Purpose of this Appendix is to eliminate useless advisory committees, strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving Consumers Union of U.S., Inc. v Department of Health, Ed and Welfare, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F 2d 466, 179 U.S App D.C 280

This Appendix was not intended to apply to all amorphous, ad hoc group meetings; only groups having some sort of established structure and defined purpose constitute "advisory committees" within meaning of this Appendix. Nader v. Baroody, D C.D.C 1975, 396 F Supp 1231.

In enacting this Appendix, Congress was concerned with formally organized advisory committees which President or an executive department or official directed to make recommendations on identified governmental policy for which specific advice was sought. Id.

2. Advisory committee

Federal Advisory Committee Act did not apply to Justice Department's solicitation of views of ABA's Standing Committee on the Federal Judiciary on prospective judicial nominees; committee was not "advisory committee" within meaning of Act, as it was not "utilized" within meaning of statute by President or Department of Justice in connection with those evaluations. Public Citizen v. U.S. Dept. of Justice, D.C. 1989, 109 S.Ct. 2558, 491 U S. 440, 105 L.Ed.2d 377.

Group of experts assembled by private scientific organization pursuant to its contract with Food and Drug Administration (FDA) to provide counsel on food safety and quality issues was not an "advisory committee" subject to requirements of Federal Advisory Committee Act; panel was established and utilized by organization, not by FDA, and organization was private contractor that did not have quasi-public status Food Chemical News v. Young, 1990, 900 F.2d 328, 283 U.S.App.D.C. 344, certiorari denied 111 S.Ct. 132, 112 L.Ed.2d 99.

Determination that the American Association of State Highway and Transportation Officials is an advisory committee within the meaning of Federal Advisory Committee Act, this Appendix, when it provides input to the Federal Highway Administration with respect to proposals to require that state highway construction plans provide for minimum safety standards did not impermissibly impair the organization's freedoms of speech and association under U.S.C.A. Const. Amend. 1. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Panel of scientist-executives convened by the Secretary of the Department of Energy to study safety of a government-owned nuclear reactor in operation in state of Washington in light of nuclear disaster at a similar power station in the Soviet Union was not an "advisory committee" within meaning of the Federal Advisory Committee Act, and thus, panel's labors would be permitted to go forward as contemplated without attendance of nonprofit environmental protection organization, where panel members had not been asked to comment upon nuclear power generally or manner of its regulation, but merely to examine whether government ought to allow a single reactor to continue in operation, and panel members would work independently and report alone. Natural Resources Defense Council, Inc. v. Herrington, D.D.C.1986, 637 F.Supp. 116.

The Commission on the Bicentennial of United States Constitution, created by Congress in 1983 to facilitate the celebration of the 200th anniversary of the Constitution, is not an "advisory committee" within the meaning of the Federal Advisory Committee Act, which requires that advisory committees hold open meetings and give reasonable advance notice of meetings, where the Committee did not render advice to the federal government, but made recommendations to state, local and private entities, and was empowered to undertake itself the federal projects which it was to plan. Public Citizen v. Commission on the Bicentennial of U.S Constitution, D.C.D.C.1985, 622 F.Supp. 753.

National Industries for the Severely Handicapped did not constitute an "advisory committee" as contemplated by the Federal Advisory Committee Act [Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A.App. II] since its advisory capacity to the Committee for Purchase From the Blind and Other Severely Handicapped was secondary to its operational activities. HLI Lordship Industries, Inc. v. Committee for Purchase from the Blind & Other Severely Handicapped, D.C.Va.1985, 615 F.Supp. 970.

Task forces cochaired by members of Executive Committee of Private Sector Survey established by the President to give advice on cost-effective management of federal programs were not subject to this Appendix, as they merely provided information and recommendations for consideration to the Committee, notwithstanding that they were intimately involved in gathering of information about federal programs and formulation of possible recommendations for consideration of the Committee. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C.1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Although Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards is an "advisory committee" subject to provisions of this appendix the Commission's Atomic Safety and Licensing Board is not an "advisory committee." Hunt v. Nuclear Regulatory Commission, D.C.Okl.1979, 468 F.Supp. 817, affirmed 611 F.2d 332, certiorari denied 100 S.Ct. 1084, 445 U.S. 906, 63 L.Ed.2d 322.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. Center for Auto Safety v. Tiemann, D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App D.C. 426

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare, D.C.D.C.1976, 409 F.Supp 473, affirmed 551 F.2d 466, 179 U.S.App.D C. 280.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. Id.

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation Lombardo v. Handler, D.C.D.C 1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S Ct 2639, 431 U.S. 932, 53 L.Ed.2d 248.

Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. Nader v Baroody, D C D C 1975, 396 F.Supp. 1231.

The Native Hawaiians Study Commission was created to advise the Congress and not the President or federal agencies, and unless so utilized by the President or an agency, is not subject to the Federal Advisory Committee Act. 1982 (Counsel-Inf.Op.) 6 O.L.C 39.

3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by virtue of Senator's position as such, had standing to complain that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 761 et seq. of Title 15. Metcalf v. National Petroleum Council, 1977, 553 F.2d 176, 180 U.S.App D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix Nader v. Baroody, D.C.D.C.1975, 396 F Supp. 1231

4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. Lombardo v. Handler, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

The Congress did not intend the Federal Advisory Committee Act to apply to a body created jointly by the United States and another nation, such as the U.S.-Japan Consultative Group on Economic relations. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 321.

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing

committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

CODE OF FEDERAL REGULATIONS

Committee management regulations—
- Consumer Products Safety Commission, see 16 CFR 1018.1.
- Department of Education, see 34 CFR 11.1.
- Department of Health and Human Services, see 45 CFR 11.1.
- Federal Emergency Management Agency, see 44 CFR 12.1.
- Marine Mammal Commission, see 50 CFR 510.1
- Nuclear Regulatory Commission, see 10 CFR 7.1

NOTES OF DECISIONS

Balanced point of view 3
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1. Standing to sue

Nonprofit public interest law center, which claimed that violation of Federal Advisory Committee Act section requiring membership of advisory committees to be fairly balanced in terms of points of view represented, by the American Bar Association Standing Committee on Federal Judiciary, contributed to exclusion of center from judicial review process, pleaded sufficient injury to confer standing to bring suit seeking to enforce balanced membership requirement under Act, where center claimed that Committee consulted on regular basis with liberal public interest groups to exclusion of conservative public interest organizations and that center had been "directly affected" by lack of balance on Committee. Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary, D.D.C. 1986, 648 F.Supp 1353.

In action for declaratory and injunctive relief alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests contrary to requirements of this section and Federal Energy Administration Act provision, section 776 of Title 15, plaintiffs' allegations of injury to themselves as consumers: anticipated higher costs for petroleum products; potential environmental damage and threats to health and safety; and anticipated denial of benefits from development of alternative sources of energy, did not confer standing to sue upon plaintiffs, particularly in light of fact that there was no nexus between plaintiffs' alleged injuries and defendants' challenged action. Metcalf v. National Petroleum Council, D.C.D.C. 1976, 407 F.Supp. 257, affirmed 553 F.2d 176.

In action by United States Senator alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fully balanced in membership and were improperly influenced by certain petroleum industry special interests, Senator did not have standing to sue on theory that defendants' actions had affected effectiveness of his votes for this Appendix and Federal Energy Administration Act, section 761 et seq. of Title 15, and had hindered him in carrying out his legislative duties through his inability to get unbiased advice and accurate information from Department of Interior and Federal Energy Administration because of Council's input into that process, particularly in view of fact that Senator showed no nexus between his alleged injuries and defendants' challenged action. Id.

2. Orders

Where dispute as to whether particular organization was covered by the Federal Advisory Committee Act, this Appendix, arose out of the consultation by a federal agency with the organization over certain proposed regulations, and where there was no allegation or proof that all contacts between the agency and the organization constituted a utilization of the organization as advisory committee, order that any future meeting between the representatives of the federal government and the organization be subject to the Federal Advisory Committee Act was overbroad, the order should apply only to consultation for advice or recommendations on proposed regulations. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

3. Balanced point of view

Executive Committee of the President's Private Sector Survey on Cost Control did not violate balanced viewpoint requirement of this Appendix on basis that virtually every member of the executive committee was an executive of a major corporation and that no public-interest representatives or beneficiaries of federal feeding programs had been appointed where Survey was designed to apply private sector expertise to attain cost-effective management in the federal government, since Survey's members represented fair balance of viewpoints given the functions to be performed. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, 1983, 711 F.2d 1071, 229 U.S.App. D.C. 143.

National Advisory Committee on Microbiological Criteria for Foods met balanced membership requirements of Federal Advisory Committee Act; though public interest groups complained of absence of consumer representation, Committee was charged with highly technical mandate requiring extensive scientific background and expertise in processing and distribution practices. Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods, D.D.C.1988, 708 F.Supp. 359.

The Executive Committee of the Private Sector Survey created by the President to give detailed advice on cost-effective management of the federal government and its agencies did not violate the balanced viewpoint requirement of this Appendix because most committee members were executives of major corporations, with two being academics and one from the labor community, and this Appendix did not require representation of public interest advocates or beneficiaries of federal food assistance programs. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C. 1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Failure of the defendant commission to appoint more than one individual in outspoken opposition to ratification of the Equal Rights Amendment (ERA) to the United States Constitution when setting up the state committee to coordinate lobbying activities for the amendment in state legislature was not such as to establish a violation of this Appendix in that this Appendix did not, by its terms or otherwise, require balancing of points of view on the Equal Rights Amendment issue in the state coordinating committee. Hall v. Siegel, D.C.Ill.1977, 467 F.Supp. 750.

All interests need not be represented or represented equally to meet applicable balance of membership requirements, but required standard must be judged on case-by-case determination, depending on authority creating particular committee. 1981, 60 Comp.Gen. 386.

4. Task forces

Task forces established to assist Executive Committee of the President's Private Sector Survey on Cost Control in the study of domestic feeding programs for low-income persons were not subject to this Appendix where it appeared that task force reports and recommendations would be exhaustively reviewed and revised by Executive Committee. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, 1983, 711 F.2d 1071, 229 U.S.App.D.C. 143.

§ 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

(As amended Pub.L. 97–375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.)

HISTORICAL AND STATUTORY NOTES

1982 Amendment

Subsec. (c). Pub.L. 97–375, § 201(c), substituted provision that the President shall, not later than Dec. 31 of each year, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year, for provision the President, not later than March 31 of each calendar year after 1972, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year.

Effective Date of 1982 Amendment

Section 201(c) of Pub.L. 97–375 provided in part that the amendment by that section to subsec. (c) of this section is effective July 1, 1983.

NOTES OF DECISIONS

1. Requests for documents

Federal Advisory Committee Act does not impose upon President or upon the Office of Administration special responsibility to guide document requests. National Sec. Archive v. Archivist of the U.S., 1990, 909 F.2d 541, 285 U.S.App.D.C. 302.

§ 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether is should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS–18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1978 Reorg. Plan No 2, § 102, eff. Jan. 1, 1979, 43 F R. 36067, 92 Stat. 3783; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 501 of the Rehabilitation Act of 1973, referred to in subsec (d)(1)(c)(i), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

1980 Amendment

Subsec. (d)(1). Pub L. 96-523 added subpar. (C).

Effective Date of 1980 Amendment

Amendment by Pub.L. 96-523 effective sixty days after Dec. 12, 1980, see section 3 of Pub.L. 96-523, set out as a note under section 3102 of this title.

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in text, "General Services Administration" for "Office of Management and Budget" in subsec. (a), and "Administrator's" for "Director's" in subsec (b), pursuant to Reorg. Plan No 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to subsec. (a) of this section for all matters relating to advisory committees, to the Administrator of General Services, effective Nov 20, 1977, as provided by section 1 of Ex.Ord. No 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R 36037, 92 Stat. 3783, set out under section 1101 of this title, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan 1, 1979, as provided by section 1-102 of Ex.Ord No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

All functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat were transferred to the Administrator of General Services by Reorg. Plan No 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, effective on or before Apr. 1, 1978, at such time as specified by the President.

Legislative History

For legislative history and purpose of Pub L. 96-523, see 1980 U.S Code Cong. and Adm. News, p. 6530.

§ 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a), pursuant to Reorg. Plan No 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov 20, 1977, as provided by section 1 of Ex.Ord. No 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsecs. (a) and (c), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

NOTES OF DECISIONS

1. **Purpose**

Purpose of this Appendix is to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals. Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 378 F.Supp. 1048

2. **Compliance, necessity of**

Where a federal agency utilizes an advisory committee for the purpose of obtaining advice, the agency must charter and establish the committee in compliance with all the terms of this Appendix; and failure to comply with such requirements cannot be employed as a subterfuge for avoiding the public access requirements of this Appendix. Food Chemical News, Inc. v. Davis, D.C.D.C. 1974, 378 F.Supp. 1048.

If Energy Policy Task Force's Plan drafting role gives it more than solely advisory functions, its charter should so state, citing authority given for those functions. 1981, 60 Comp.Gen. 386.

3. **Members of committee**

Presence of retired Supreme Court justice and active circuit judge on Presidential Commission to investigate organized crime did not violate constitutional separation-of-powers doctrine; service of judges was voluntary, judicial membership on advisory commission did not prevent it from carrying out its duties, and participation by judges did not disrupt operation of courts. Matter of President's Com'n on Organized Crime Subpoena of Scarfo, C.A.3 (N.J.) 1986, 783 F.2d 370.

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

(As amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

1976 Amendment

Pub.L. 94-409 added "portion of an" following "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552b(c) of Title 5, for provisions relating to determinations of matters listed in section 552(b) of Title 5

Effective Date of 1976 Amendment

Amendment by Pub.L. 94-409 effective 180 days after Sept 13, 1976, see section 6 of Pub.L 94-409, set out as a note under section 552b of this title.

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec (a)(2) and (3), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex Ord No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix

Legislative History

For legislative history and purpose of Pub.L. 94-409, see 1976 U.S. Code Cong. and Adm. News, p. 2183

NOTES OF DECISIONS

1. **Construction with other laws**

Freedom of Information Act provisions, section 552 of this title, dealing with intra-agency and interagency memoranda are applicable, under this section to advisory committee meetings. Aviation Consumer Action Project v. Washburn, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meetings of advisory committees serving cost of living council. Nader v. Dunlop, D.C.D.C.1973, 370 F.Supp. 177.

2. **Purpose**

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" utilized by the Bureau Director to obtain advice within the meaning of this Appendix, and said meetings were therefore open to the public. Food Chemical News, Inc. v. Davis, D.C.D.C. 1974, 378 F.Supp. 1048.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations of committee meetings. Nader v. Dunlop, D.C.D.C.1973, 370 F.Supp. 177.

3. **Meetings within section**

Where meeting between Food and Drug Administration and organization representing cosmetics industry was for purpose of presenting organization's voluntary ingredient testing program, and no matters of Administration policy or regulation were at issue, parties were not bound by provisions of this Appendix, and thus neither public access to such meetings, nor chartering of such organization, would be required. Consumers Union of U.S., Inc v. Department of Health, Ed. and Welfare, D.C.D.C 1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280

At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be provided. Nader v. Dunlop, D.C.D.C 1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. Gates v. Schlesinger, D.C.D.C.1973, 366 F.Supp 797.

3a. **Discretion of agency**

Under this section, advisory committees both meet and render advice to governmental agencies involved at the pleasure of those agencies and if it pleases agency in question to refrain from convening committee or soliciting its advice, agency is entirely at liberty to do so. Dabney v. Reagan, D.C.N.Y.1982, 559 F.Supp 861

3b. **Convening of meetings**

Fact that solar energy and energy conservation bank's advisory committees' charters provided that they would ordinarily convene in full session four times a year did not abrogate express subsec. (f) of this section that advisory committees "shall not hold any meeting except at the call of, or with the advance approval of," the designated federal employee. Dabney v. Reagan, D.C.N.Y.1982, 559 F.Supp. 861.

4. **Public participation**

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the

Services conducted so as to be open to public, there was no right of public participation in advisory committee. Gates v. Schlesinger, D.C.D.C. 1973, 366 F.Supp. 797.

5. Exchange of information

Executive committee's review of staff recommendations concerning cost control under food stamp program were deliberative and not a mere sham and did not violate this section where task force recommendations were distributed to members of executive committee for study in advance of public hearing and at the hearing comments were specifically brought to attention of full membership even though belatedly filed and in other instances the committee rejected recommendations contained in the staff reports. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C.1983, 566 F.Supp. 1515.

For purposes of this Appendix, exchange of information does not make advisory committee "part of" its government agency. Gates v. Schlesinger, D.C.D.C.1973, 366 F.Supp. 797.

6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. Nader v. Dunlop, D.C.D.C.1973, 370 F.Supp. 177.

7. Injunction

Where pleadings were limited to actions of Travel Advisory Board in holding closed meeting and did not refer to any other advisory committees in the Department of Commerce, and where all evidence was directed towards the TAB, injunction which purported to require timely advance public notice of each meeting of the TAB or any other advisory committee in the Department was overbroad. Aviation Consumer Action Project v. Washburn, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Injury to nonprofit environmental protection organization if panel of scientist-executives convened by the Secretary of the Department of Energy to study safety of government-owned nuclear reactor in Washington were determined to in fact be subject to requirements of the Federal Advisory Committee Act was neither substantial nor irreparable, whereas injury to the Secretary and the remainder of the country caused by delay would be substantial and irreparable, and thus, organization was not entitled to preliminary injunction enjoining activities of panel until organization's representative should be allowed to attend, where any recommendations by panel would soon be available by request under the Freedom of Information Act. Natural Resources Defense Council, Inc. v. Herrington, D.D.C.1986, 637 F.Supp. 116.

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court would issue preliminary injunction requiring such meeting to be open to the public. Gates v. Schlesinger, D.C.D.C.1973, 366 F.Supp. 797.

8. Public access

Federal Advisory Committee Act section requiring advisory committees to make its records available for public inspection subject to Freedom of Information Act (FOIA) incorporated not only FOIA's nine exemptions but also its mandatory procedural mechanism of written request followed by administrative review; therefore, newsletter publisher which sought access to documents relating to meetings of Advisory Committee on the Food and Drug Administration established no violation of the law when committee refused to disclose documents absent FOIA request. Food Chemical News v. Advisory Committee on Food and Drug Admin., D.D.C.1991, 760 F.Supp. 220.

Public interest research institute's misdirected application to Office of Administration for Tower Commission report, which investigated the sale of arms to Iran and transfer of resulting proceeds to the Contras in Nicaragua, was not sufficient under the Freedom of Information Act or the Federal Advisory Committee Act, since the request should have been made to the Commission itself while it existed, since Office had no authority or responsibility over the Commission's records; institute was unable to compel disclosure of those documents. National Sec. Archive v. Executive Office of The President, D.D.C.1988, 688 F.Supp. 29, affirmed 909 F.2d 541, 285 U.S.App.D.C. 302.

The press has a statutory right under this Appendix as well as a privilege under U.S.C.A. Const. Amend. 1 to report on the manner in which government affairs are conducted. Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 378 F.Supp. 1048.

The privacy exemption of the open meeting requirement in section 552 of Title 5, Government Organization and employees, made applicable to advisory committees may permit closing of some portions of meetings of subgroups of the Humanities Panel at which individual grant applications are discussed. 1980 (Counsel-Inf.Op.) 4B Op. O.L.C. 743.

Legislation that would grant the President's Commission on the Accident at Three Mile Island the power to issue subpoenas is sufficient also to allow the closing of its meetings under certain circumstances under the exemption contained in section 552b(c)(10) of this title relating to the "agency's issuance of a subpoena. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 208.

9. Interagency or intra-agency memoranda

Evidence that there had been more than 20 meetings of the Travel Advisory Board and that on only three occasions had portions of the meeting been closed to the public demonstrated that the Board was not abusing exemption provided to it under subsec. (d) of this section from requirement of holding open meetings when interagency and intra-agency memoranda were being discussed. Aviation Consumer Action Project v. Washburn, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Provisions of this section dealing with open meetings do not apply to any advisory committee meeting which the head of an agency determines is concerned with interagency or intra-agency memoranda. Id.

Even after interagency or intra-agency memorandum has been disclosed to member of an advisory committee, the memorandum may still be considered an inter-agency or intra-agency memorandum so that fact that such disclosure is made to a member of an advisory committee does not preclude advisory committee from holding a closed meeting in accordance with the exemption provided for in subsec. (d) of this section and section 552 of this title. Id.

10. Regulations

Where regulations which were challenged had been revised through procedure in which the revised regulations were published in draft form and public comment was invited and where the new regulations were temporary, court would not overturn original regulations despite failure of Federal Highway Administration to comply with requirements of this Appendix in adopting the initial regulations. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

11. Standing to sue

Persons active in opposing enactment of Equal Rights Amendment to United States Constitution were without standing to bring suit against National Commission on the Observance of International Women's Year, 1975, to enjoin it from supporting enactment of the Equal Rights Amendment, engaging in lobbying activities, and other pursuits. Mulqueeny v. National Commission on the Observance of Intern. Women's Year, 1975, C.A.Ill.1977, 549 F.2d 1115.

Corporation in business of manufacturing and supplying military decorations and insignia to government had standing to assert violations of the Federal Advisory Committee Act in challenging action of Committee for Purchase From the Blind and Other Severely Handicapped to take particular medals and medal sets out of competitive bidding and place them on list as commodities suitable for procurement by government for qualified nonprofit agencies for the blind or other severely handicapped since corporation had injury in fact based on Committee's decision, injury could be remedied if court invalidated decision, and corporation's interest fell within zone of interest of the Act. HLI Lordship Industries, Inc. v. Committee for Purchase from the Blind & Other Severely Handicapped, D.C.Va.1985, 615 F.Supp. 970.

Individual recipients of federal food assistance benefits and an antihunger coalition were granted standing to challenge membership on the President's Executive Committee of the Private Sector Survey as lacking the balanced representation required by this Appendix as well as to question Committee's compliance with procedural requirements of this Appendix. National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control, D.C.D.C. 1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Nonprofit corporation whose activities centered broadly upon transportation safety issues and whose functions included monitoring activities of Federal Highway Administration had standing to challenge alleged failure of the Federal Highway Administration to comply with rule-making provisions of sections 551 et seq. and 701 et seq. of this title when providing for alternative procedure for approving state highway safety plans and failure of the Federal Highway Administration to open meetings with a particular organization to the public pursuant to this Appendix. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

§ 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

HISTORICAL AND STATUTORY NOTES

References in Text

Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub.L. 92–463 on Oct. 6, 1972, see section 15 of Pub.L. 92–463.

NOTES OF DECISIONS

1. Standing to sue

Any person whose request for information under this appendix had been denied has standing to sue for the information. Center for Auto Safety v. Tiemann, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

§ 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

HISTORICAL AND STATUTORY NOTES

Transfer of Functions

"Administrator", meaning Administrator of General Services, was substituted for "director", meaning Director of the Office of Management and Budget, in text, pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by

appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

HISTORICAL AND STATUTORY NOTES

References in Text

Effective date of this Act, referred to in subsec. (a)(1), as meaning effective upon expiration of ninety days following enactment of Pub.L. 92–463 on Oct. 6, 1972, see section 15 of Pub.L. 92–463.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11827

Ex.Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, as amended, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under this section.

EXECUTIVE ORDER NO. 11948

Ex.Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, as amended by Ex.Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839; Ex.Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under this section.

EXECUTIVE ORDER NO. 12007

Aug. 22, 1977, 42 F.R. 42839

TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C.App. I), it is hereby ordered as follows:

Section 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 [set out as a note under Section 2000e of Title 42, The Public Health and Welfare], is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of section 4 of Executive Order No. 11514 of March 5, 1970 [set out as a note under section 4321 of Title 42, The Public Health and Welfare], is revoked.

Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 13, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade], is revoked.

Sec. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 [set out as a note under section 887d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 [set out as a note under section 3107 of Title 22, Foreign Relations and Intercourse], is revoked.

Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 12029

Dec. 14, 1977, 42 F.R. 63631

TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C.App. I), it is hereby ordered as follows:

Section 1. (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11342, as amended, is revoked.

Sec. 2. Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976, which extended the above advisory committee until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 12110

Ex.Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under this section.

EXECUTIVE ORDER NO. 12258

Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, as amended by Ex.Ord. No. 12271, Jan. 15, 1981, 46 F.R. 4677; Ex.Ord. No. 12299, Mar. 17, 1981, 46 F.R. 17751; Ex.Ord. No. 12305, May 5, 1981, 46 F.R. 25421; Ex.Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, set out as a note below.

[Executive Order No. 12299, which had been set out in the credit to this Executive Order, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.]

EXECUTIVE ORDER NO. 12305

May 5, 1981, 46 F.R. 25421

TERMINATION OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App. I), the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

(a) Executive Order No. 12059 of May 11, 1978, as amended, [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure], establishing the United States Circuit Judge Nominating Commission;

(b) Executive Order No. 11992 of May 24, 1977 [set out as a note preceding chapter 1 of Title 28], establishing the Committee on Selection of Federal Judicial Officers;

(c) Executive Order No. 12084 of September 27, 1978, as amended by Executive Order 12097 of November 8, 1978, [set out as a note under section 133 of Title 28], establishing the Judicial Nominating Commission for the District of Puerto Rico; and

(d) Executive Order No. 12064 of June 5, 1978, [set out as a note under section 7443 of Title 26, Internal Revenue Code], establishing the United States Tax Court Nominating Commission.

Subsections (g), (i), (j) and (k) or Section 1-101 of Executive Order No. 12258, [set out as a note under this section], extending these committees, are also revoked.

RONALD REAGAN

EXECUTIVE ORDER NO. 12379

Aug. 17, 1982, 47 F.R. 30699

TERMINATION OF BOARDS COMMITTEES, AND COMMISSIONS

By the authority vested in me as President by the Constitution and statutes of the United States of America, and to terminate the establishing authorities for committees that are inactive or no longer necessary, it is hereby ordered as follows:

Section 1. Executive Order No. 12071, as amended [set out as a note under section 1001 of Title 29, Labor], establishing the President's Commission on Pension Policy is revoked.

Sec. 2. Executive Order No. 12042 [not classified to the code], creating a Board of Inquiry to Report on Labor Disputes Affecting the Bituminous Coal Industry in the United States, is revoked.

Sec. 3. Executive Order No 12085 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Norfolk and Western Railway Company and Certain of Its Employees, is revoked.

Sec. 4. Executive Order No. 12132 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the National Railway Labor Conference and Certain of Its Employees, is revoked.

Sec. 5. Executive Order No. 12095 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between Wien Air Alaska, Inc., and Certain Individuals, is revoked.

Sec. 6. Executive Order No. 12159 [not classified to the code], creating an Emergency Board to Investigate Disputes Between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; and the United Transportation Union, is revoked.

Sec. 7. Executive Order No. 12182 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Long Island Rail Road and Certain of Its Employees, is revoked.

Sec. 8. Executive Order No. 12207 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees, is revoked.

Sec. 9. Executive Order No. 12262 [set out as a note under section 1001 of Title 29, Labor], establishing an Interagency Employee Benefit Council, is revoked.

Sec. 10. Executive Order No. 12275 [set out as a note under section 951 of Title 20, Education], establishing the Design Liaison Council, is revoked.

Sec. 11. Executive Order No. 11829, as amended [set out as a note under section 640d of Title 25, Indians], establishing the Hopi-Navajo Land Settlement Interagency Committee, is revoked.

Sec. 12. Executive Order No 11022, as amended [set out as a note under section 3001 of Title 42, The Public Health and Welfare], establishing the President's Council on Aging, is revoked.

Sec. 13. Executive Order No. 12192 [set out as a note under section 2021 of Title 42], establishing the State Planing [Planning] Council on Radioactive Waste Management, is revoked.

Sec. 14. Executive Order No. 12075, as amended [set out as a note under section 1450 of Title 42], establishing the Interagency Coordinating Council, is revoked.

Sec. 15. Executive Order No. 11782 [set out as a note under section 2281 of Title 12, Banks and Banking], establishing the Federal Financing Bank Advisory Council, is revoked.

Sec. 16. Executive Order No. 12089, as amended [set out as a note under section 2401 of Title 15, Commerce and Trade], establishing the National Productivity Council, is revoked.

Sec. 17. Executive Order No. 11330, as amended [set out as a note preceding section 2711 of Title 42, The Public Health and Welfare], establishing the President's Council on Youth Opportunity, is revoked.

Sec. 18. Executive Order No. 11256 [not classified to the code], establishing the President's Committee on Food and Fiber and establishing the National Advisory Commission on Food and Fiber, is revoked.

Sec. 19. Executive Order No 11654 [set out as a note under section 278f of Title 15, Commerce and Trade], continuing the Federal Fire Council, is revoked.

Sec. 20. Executive Order No 12083, as amended [set out as a note under section 7101 of Title 42, The Public Health and Welfare], establishing the Energy Coordinating Committee, is revoked.

Sec. 21. Executive Order No. 12285, as amended and ratified [set out as a note under section 1701 of Title 50, War and National Defense], establishing the President's Commission on Hostage Compensation, is revoked.

Sec. 22. Executive Order No 12202, as amended [set out as a note under section 5848 of Title 42, The Public Health and Welfare], establishing the Nuclear Safety Oversight Committee, is revoked.

Sec. 23. Executive Order No 12194 [set out as a note under section 4321 of Title 42], establishing the Radiation Policy Council, is revoked.

Sec. 24. The veterans' Federal Coordinating Committee (Weekly Compilation of Presidential Documents, volume 14, number 41, page 1743) [not classified to the code] is terminated.

Sec. 25. The President's Council on Energy Efficiency (Weekly Compilation of Presidential Documents, volume 16, numbers 18 and 30, pages 790 and 1404) [not classified to the code] is terminated.

RONALD REAGAN

EXECUTIVE ORDER NO. 12399

Ex.Ord No. 12399, Dec 31, 1982, 48 F.R. 379, which related to the continuance of certain federal advisory committees, was superseded by Ex Ord. No 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12489

Ex.Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, which related to the continuance of certain federal advisory committees was superseded by Ex.Ord. No 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12534

Ex.Ord. No. 12534, Sept 30, 1985, 50 F.R. 40319, which related to the continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12610

Ex Ord No 12610, Sept. 30, 1987, 52 F.R. 36901, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12692

Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, as amended by Ex.Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969, which provided for the continuance of certain federal advisory committees, was superseded by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, set out as a note under this section.

EXECUTIVE ORDER NO. 12774

Sept. 27, 1991, 56 F.R. 49835

CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App.)[this Appendix], it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1993.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior) [set out as a note under section 110 of Title 3, The President].

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor) [set out as a note under section 7902 of this title].

(c) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(d) President's Committee on the Arts and the Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts).

(e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor) [set out as a note under section 271 of Title 22, Foreign Relations and Intercourse].

(f) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services) [set out as a note preceding section 6000 of Title 42, The Public Health and Welfare].

(g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation) [set out as a note under section 1881 of Title 42].

(h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services) [set out as a note under section 300u-5 of Title 42].

(i) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce) [set out as a note under section 2401 of the Appendix to Title 50, War and National Defense].

(j) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in Section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive orders or sections thereof, which established committees that have been terminated or whose work has been completed, are revoked:

(a) Section 3-401 of Executive Order No. 12661, as amended by Executive Order No. 12716[set out as a note under section 2901 of Title 19, Customs Duties], establishing the National Commission on Superconductivity;

(b) Executive Order No. 12686, as amended by Executive Order No. 12705, establishing the President's Commission on Aviation Security and Terrorism; and

(c) Executive Order No. 12658, as amended by Executive Order No. 12665[formerly set out as a note under section 2210 of Title 42], establishing the President's Commission on Catastrophic Nuclear Accidents.

Sec. 4. Executive Order No. 12692 [formerly set out as a note under this section] is superseded.

Sec. 5. This order shall be effective September 30, 1991.

GEORGE BUSH

NOTES OF DECISIONS

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1. Prospective effect

This Appendix Committee Act was intended to have both immediate effect through this section providing for termination of advisory committees and prospective effect through sections 5, 6 and 7 providing procedures which contemplate studied decision on whether particular advisory committee is necessary. Carpenter v. Morton, D.C.Nev. 1976, 424 F.Supp. 603.

2. Remedies available

Congress in enacting this Appendix was concerned about proliferation of advisory committees which had outlived their usefulness; to remedy situation, Congress chose to terminate all advisory committees. Carpenter v. Morton, D.C.Nev. 1976, 424 F.Supp. 603.

3. Powers and duties

Congress contemplated that this Appendix would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. Carpenter v. Morton, D.C.Nev.1976, 424 F.Supp. 603.

4. Presumptions

The rebuttable presumption that, unless a statute creating an advisory committee deals expressly with its termination, the committee terminates 2 years after enactment of the Federal Advisory Committee Act or after the creation of the committee, whichever comes later, may be rebutted by a showing that the Congress, in creating a committee, assigned to it a specific ongoing function that is integral to a particular statutory scheme. 1979 (Counsel-Inf Op.) 3 Op.O.L.C. 170

5. Exemptions

Although a professional legal association's standing committee on the federal judiciary was an "advisory committee," subject to the open meeting and records provisions of the Federal Advisory Committee Act, application of the act to committee would violate separation of powers doctrine and constitutional provisions requiring that the President alone shall nominate candidates for federal judgeships, as it would potentially inhibit the president's freedom to investigate, to be informed, to evaluate and to consult during the process of nominating federal judges, particularly as the purposes of the Act were served through the public confirmation process, and any need for applying the Act to the committee was outweighed by the president's interest in preserving confidentiality and freedom of consultation in selecting judicial nominees. Washington Legal Foundation v. U.S. Dept. of Justice, D.D.C.1988, 691 F.Supp. 483.

§ 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

Clinton Presidential Records
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Divider Title: **ATTACHMENT C**

Chairman, Committee of Governmental Operations, United States House of Representatives, suite, 2157, Rayburn House Office Building, Washington, DC 20515.

§ 101-6.405 **Additional guidance.**

(a) House of Representatives Report No. 99-451 99th Cong., 1st Sess. (1985) clearly indicates the intent of Congress to eliminate abuse of home-to-work transportation. The report notes, on p. 7, that:

The provision for "field work" is meant to cover an employee of [a Federal] agency whose job requires the employee's presence at various locations that are at a distance from [the employee's] place of employment * * *. Examples of such employees include, but are not limited to, mine inspectors, meat inspectors, and certain other law enforcement officers, whose jobs require travel to several locations during the course of a workday. However, the field work exception may not be used (1) when the [employee's] workday begins at his or her official [G]overnment duty station, or (2) when the [employee] normally commutes to a fixed location, however far removed from his or her official duty station (for example, auditors or investigators assigned to a defense contractor plant). Although their daily work station is not located in a [G]overnment office, these [employees] are not performing "field work" * * *. Like all [G]overnment employees, [employees] working in a "field office" are responsible for their own commuting costs.

The report also states in the same section that the legislation is intended to allow home-to-work transportation for medical officers on outpatient service. The guidelines contained in the report, as well as the *Congressional Record* (daily ed. October 10, 1986, pp. S 15865-15868), should provide an adequate basis for an agency to determine which of its employees may be authorized home-to-work transportation.

(b) Additional examples of employees who may perform field work include, but are not limited to, quality assurance inspectors, construction inspectors, customs inspectors, dairy inspectors, revenue officers, compliance investigators, and personnel background investigators. The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation. When authorized, such transportation should be provided only on days when the employee actually performs field work, and then only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

(c) Instances may occur when an employee, by the nature of his/her job, is designated as being authorized home-to-work transportation under the field work provision. However, circumstances may require that field work only be performed on an intermittent basis. In those instances, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed.

(d) In making field work determinations under § 101-6.403(b), an agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs. The determination should contain sufficient information, such as the job title, number, and operational level where the work is to be performed (i.e., five recruiter personnel or positions at the Detroit Army Recruiting Battalion) to satisfy an audit, if necessary.

(e) Situations may arise where it is more cost-effective for the Government to provide an employee a vehicle for home-to-work transportation rather than have the employee travel a long distance to pick up a vehicle and then drive back toward or beyond his/her residence to perform his/her job. In those situations agencies should consider basing the vehicle at a Government facility located near the employee's job site. If such a solution is not feasible, an agency must then decide if the use of the vehicle should be approved under the compelling operational considerations definition. Home-to-work transportation in such cases may be approved only if other available alternatives would involve substantial cost to the Government or expenditure of substantial employee time.

Subparts 101-6.5—101-6.9—[Reserved]

Subpart 101-6.10—Federal Advisory Committee Management

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR 1977 Comp., p. 158.

SOURCE: 52 FR 45929, Dec. 2, 1987, unless otherwise noted.

§ 101-6.1001 **Scope.**

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

(b) The Act and this subpart do not apply to advisory meetings or groups listed in § 101-6.1004.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1002 **Policy.**

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in the creation or elimination of, or change in regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the provisions in the Government in the Sunshine Act, 5 U.S.C. 552(b).

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1003 **Definitions.**

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

Agency has the same meaning as in section 551(1) of title 5 of the United States Code.

Committee Management Secretariat (*Secretariat*), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

Committee member means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

Presidential advisory committee means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

Staff member means any individual who serves in a support capacity to an advisory committee.

Utilized (or *used*), as referenced in the definition of *Advisory committee* in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101-6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, the responsible agency head shall follow the procedures provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

§ 101-6.1006 [Reserved]

§ 101-6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes

the date of establishment or renewal. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by § 101-6.1009 and § 101-6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1009 Responsibilities of an agency head.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this subpart;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee and its subcommittees;

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics in 5 CFR parts 734, 735, and 737, and additional requirements, if any, established by the sponsoring agency pursuant to Executive Order 12674, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1010 [Reserved]

§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this subpart and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of § 101-6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1012 [Reserved]

§ 101-6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—

(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the filed charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter indicating the Congressional filing date, with the Secretariat.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee shall file—

(1) The charter with the Secretariat;

(2) A copy of the filed charter with the Library of Congress; and

(3) If specifically directed by law, a copy of the charter indicating its date of filing with the Secretariat, with the standing committees on the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

§ 101-6.1014 [Reserved]

§ 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the FEDERAL REGISTER is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the FEDERAL REGISTER that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 calendar days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an advisory committee meeting a notice in the FEDERAL REGISTER, which includes:

(i) The exact name of the advisory committee as chartered;

(ii) The time, date, place, and purpose of the meeting;

(iii) A summary of the agenda; and

(iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.

(2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the FEDERAL REGISTER.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1016 [Reserved]

§ 101-6.1017 Responsibilities of the agency Committee Management Officer.

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that section 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records include, but are not limited to:

(a) A set of approved charters and membership lists for each advisory committee;

(b) Copies of the agency's portion of the Annual Report of Federal Advisory Committees required by paragraph (b) of § 101-6.1035;

(c) Agency guidelines on committee management operations and procedures as maintained and updated; and

(d) Agency determinations to close advisory committee meetings as required by paragraph (c) of § 101-6.1023.

§ 101-6.1018 [Reserved]

§ 101-6.1019 Duties of the Designated Federal Officer.

The agency head or, in the case of an independent Presidential advisory committee, the Administrator shall designate a Federal officer or employee, who may be either full-time or permanent part-time, to be the Designated Federal Officer for each advisory committee and its subcommittees, who:

(a) Must approve or call the meeting of the advisory committee;

(b) Must approve the agenda;

(c) Must attend the meetings;

(d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

§ 101-6.1020 [Reserved]

§ 101-6.1021 Public participation in advisory committee meetings.

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

§ 101-6.1022 [Reserved]

§ 101-6.1023 Procedures for closing an advisory committee meeting.

(a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency or, in the case of an independent Presidential advisory committee, the general counsel of the General Services Administration should review all requests to close meetings.

(c) If the agency head or, in the case of an independent Presidential advisory committee, the Administrator agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) State the reasons why all or part of the meeting is closed, citing the specific exemptions used from the Government in the Sunshine Act in the meeting notice published in the FEDERAL REGISTER.

§ 101-6.1024 [Reserved]

§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

(1) Time, date, and place;

(2) A list of the following persons who were present:

(i) Advisory committee members and staff;

(ii) Agency employees; and

(iii) Members of the public who presented oral or written statements;

(3) An estimated number of other members of the public present;

(4) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(5) Copies of each report or other document received, issued, or approved by the committee.

(b) The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

§ 101-6.1026 [Reserved]

§ 101-6.1027 Termination of advisory committees.

(a) Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

(1) Its duration is otherwise provided for by law;

(2) The President or agency head renews it prior to the end of such period; or

(3) The President or agency head terminates it before that time by revoking or abolishing its establishment authority.

(b) If an agency head terminates an advisory committee, the agency shall notify the Secretariat of the effective date of termination.

§ 101-6.1028 [Reserved]

§ 101-6.1029 Renewal and rechartering of advisory committees.

(a) Advisory committees specifically directed by law:

(1) Whose duration extends beyond 2 years shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general agency authority with the provisions of § 101-6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a

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committee complies with the provisions of § 101-6.1007.

§ 101-6.1030 [Reserved]

§ 101-6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or authorized by law; or established by the President.* The agency head shall be responsible for ensuring that any minor technical changes made to current charters are consistent with the relevant statute or Executive Order. When the Congress by law, or the President by Executive Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number or frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. The agency head retains final authority for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

§ 101-6.1032 [Reserved]

§ 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this subpart shall require an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS-15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this subpart, an agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GS-18, as provided in 5 U.S.C. 5332.

(b) *Pay for staff members of an advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General

Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(c) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing in this section shall prevent any person who (without regard to his or her service with an advisory committee) is a full time Federal employee from receiving compensation at a rate which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section shall prevent any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and pay system in chapter 51 and chapter 53 of title 5, United States Code.

§ 101-6.1034 [Reserved]

§ 101-6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101-6.1008, detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRMR subpart 201-45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304-GSA-XX.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of title 5, United States Code.

(d) Subject to section 552 of title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified in paragraph (a)(2) of § 101-6.1013.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

Subparts 101-6.11—101-6.20 [Reserved]

Subpart 101-6.21—Intergovernmental Review of General Services Administration Programs and Activities

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29329, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, Dec. 23, 1982, 48 FR 17101, Apr. 21, 1983, and 48 FR 29096, June 24, 1983.

§ 101-6.2100 Scope of subpart.

This subpart implements Executive Order 12372, "Intergovernmental Review of Federal Programs", for Federal financial assistance and direct Federal development programs of the General Services Administration (GSA).

§ 101-6.2101 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 intergovenmental 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 and direct Federal development.

(c) These regulations are intended to aid the internal management of GSA, and are not intended to create any right or benefit enforceable at law by a party against GSA or its officers.

§ 101-6.2102 What definitions apply to these regulations?

GSA means the U.S. General Services Administration.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

Administrator means the Administrator of General Services or an official or employee of GSA acting for the Administrator 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.

§ 101-6.2103 What programs and activities of GSA are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of GSA's programs and activities that are subject to these regulations.

§ 101-6.2104 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, GSA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 101-6.2105 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, 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 GSA regarding programs and activities covered under these regulations.

§ 101-6.2106 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 101-6.2103 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 Administrator of the GSA programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit to the Administrator an assurance that the State has consulted with elected local elected officials regarding the change. GSA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 101-6.2107 How does the Administrator communicate with State and local officials concerning GSA's programs and activities?

(a) [Reserved]

(b) The Administrator provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financ

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Divider Title: **ATTACHMENT D**

"SEC. 196. ADMINISTRATION.

"(a) DONATIONS.—

"(1) SERVICES.—

"(A) VOLUNTEERS.—Notwithstanding section 1342 of title 31, United States Code, the Corporation may solicit and accept the voluntary services of individuals to assist the Corporation in carrying out the duties of the Corporation under this Act, and may provide to such individuals the travel expenses described in section 192A(d).

"(B) LIMITATION.—Such a volunteer shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

"(i) for the purposes of the tort claims provisions of chapter 171 of title 28, United States Code, a volunteer under this subtitle shall be considered to be a Federal employee;

"(ii) for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, volunteers under this subtitle shall be considered to be employees, as defined in section 8101(1)(B) of title 5, United States Code, and the provisions of such subchapter shall apply; and

"(iii) for purposes of the provisions of chapter 11 of part I of title 18, United States Code, such a volunteer (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

"(C) INHERENTLY GOVERNMENTAL FUNCTION.—

"(i) IN GENERAL.—Such a volunteer shall not carry out an inherently governmental function.

"(ii) REGULATIONS.—The Chief Executive Officer shall promulgate regulations to carry out this subparagraph.

"(iii) INHERENTLY GOVERNMENTAL FUNCTION.—As used in this subparagraph, the term '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.

"(2) PROPERTY.—

"(A) IN GENERAL.—The Corporation may solicit, accept, hold, administer, use, and dispose of, in furtherance of the purposes of this Act, donations of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise. Donations accepted under this subparagraph shall be used as nearly as possible in accordance with the terms, if any, of such donation.

"(B) STATUS OF CONTRIBUTION.—Any donation accepted under subparagraph (A) shall be considered to be a gift, devise, or bequest to, or for the use of, the United States.

"(C) RULES.—The Chief Executive Officer shall establish written rules to ensure that the solicitation, acceptance, holding, administration, and use of property described in subparagraph (A)—

"(i) will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and

"(ii) will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs.

"(D) DISPOSITION.—Upon completion of the use by the Corporation of any property accepted pursuant to subparagraph (A) (other than money or monetary proceeds from sales of property so accepted), such completion shall be reported to the General Services Administration and such property shall be disposed of in accordance with title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

"(3) VOLUNTEER.—As used in this subsection, the term 'volunteer' does not include a participant.

"(b) CONTRACTS.—Subject to the Federal Property and Administrative Services Act of 1949, the Corporation may enter into contracts, and cooperative and interagency agreements, with Federal and State agencies, private firms, institutions, and individuals to conduct activities necessary to assist the Corporation in carrying out the duties of the Corporation under this Act.

"(c) OFFICE OF MANAGEMENT AND BUDGET.—Appropriate circulars of the Office of Management and Budget shall apply to the Corporation.

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Divider Title: **ATTACHMENT E**

Attachment E

VISTA PROJECT POLICIES

Funding for VISTA Projects

- Funds for VISTA Projects are allocated to the regions and states according to the resource allocation formula used by ACTION for all OAVP and VISTA programs.

- VISTA projects are funded by volunteer service years (VSY's). Currently one VSY = $10,365.

- Regional Directors have some discretion in allocating the fund because strict application of the formula would adversely affect some states. Therefore, some regional directors establish a base of 10 VSY's for each state, then allocate the remaining funds based on the formula.

VISTA Project Approval

- The review and approval process is designed to assure all potential sponsors have equal consideration. Each project application is evaluated based on established criteria. Projects are ranked and recommended by the state and regional reviewers based on how well the criteria is met.

- If there are more applications received than funds are available, the approval decisions are usually based on the recommendations (and ranking order) of the state and regional reviewers. Unfunded projects may be held for future approval if VSY's are available or new funds are received.

VISTA Supervision and Transportation Grants

- VISTA Program Supervision and Transportation Grants are based on need and are negotiated between the ACTION's regional office and the sponsor.

VISTA Project Grants

- VISTA project grants are announced in the Federal Register and are competitively awarded. (VISTA project grants are the exception rather than the rule and usually are awarded if there are excess funds at year end.)

Sources: *VISTA Handbook*
Audrey Thomas
Rosezina Dunn

Notices

Federal Register
Vol. 50, No. 147
Wednesday, July 31, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Guidelines; Final Notice

AGENCY: Action.

ACTION: Final Notice of VISTA Guidelines.

SUMMARY: This Notice outlines the Guidelines under which the VISTA program will operate. Part I sets forth the overall programmatic direction of the VISTA program; Part II discusses criteria for selection of VISTA sponsors and projects; and Part III describes VISTA project approval procedures. The Guidelines incorporate certain changes made to Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113), by the amendments of 1984 (Pub. L. 98–288). Certain revision have been made in response to comments and suggestions received from members of the public.

DATE: The VISTA Guidelines shall take effect September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Suzanne Gibson Wise, Director of VISTA, Action, 806 Connecticut Avenue, NW., Washington, D.C. 20525. (202) 634–9445.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service of 1973, as amended (42 U.S.C. 5060), defines the term regulation and describes the procedures to be followed in prescribing regulations. Though its broad definition of a regulation, the section requires that "any rule, regulation, guideline interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551 et seq.) may, in whole or in part, be required by our Act to be published in proposed form for public comment.

The VISTA Guidelines were published in proposed form in the Federal Register for comment on April 23, 1985 (50 FR 15944—15947).

Discussion of Comments and Response

A total of 15 comments were received from current VISTA sponsors, members of the general public and members of Congress in response to the proposed Guidelines. Each recommendation has been duly considered. The following is the Agency response to the substantive comments, and the resulting modifications.

Part II—Criteria for Selection of VISTA Sponsors and Projects

One comment recommended that the legal requirement of VISTA to generate private sector resources and encourage volunteer service at the local level be added as a project selection criterion. This criterion has been added to Part II, Section A.

Some VISTA sponsors recommended deleting the prohibition against VISTA Volunteers holding outside employment while in VISTA service. Section 104(a) of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) states that "Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty . . . and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave." Since VISTA legislation does not permit any activities which interfere with full-time service, this suggestion was not adopted.

Part III—VISTA Project Approval Process

Several comments were received recommending the ACTION provide organizations applying for new VISTA projets with reasons for disapproval if the applications are turned down. This suggestion has been adopted in Part III, Section A and Part III, Section B2.

Other comments concerned the length of time required for final decisions on new VISTA project applications. The timeframe within which the Director of VISTA must render a final decision on new project applications has been reduced from 60 to 45 days in response to the comments. Additionally, since second and third year project renewals will be decided by ACTION Regional Directors, the number of remaining projects which require Director of VISTA approval will be greatly reduced, thereby expediting the decision-making process.

For purpose of clarity and consistency, the term "renewal" is used throughout the guidelines whereas the terms "renewal" and "continuation" were used interchangeably in the proposed guidelines.

Questions were raised concerning the apparent lack of a requirement by ACTION to provide existing projects with reasons for tentative denial of refunding. The requirement to provide such reasons in contained in section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR Part 1206, Subpart B. For purposes of clarification, the requirement had been restated in the VISTA Guidelines under Part III, Section B.

The requirement that existing projects seeking certain increases in volunteer levels must be approved by the Director of VISTA has been simplified in response to several comments received. Only projects seeking an increase of 5 or more volunteers, regardless of the level previously approved, require final approval by the Director of VISTA. All other increases in volunteer levels will be approved by the ACTION Regional Director.

Other comments were received concerning the treatment of project applications from existing sponsors requesting VISTA Volunteers for new program emphasis areas of for substantially different activities. The Guidelines treat such applications in the same manner as all other *new* project applications. New project applications, if denied, are not subject to the denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act and 45 CFR Part 1206, Subpart B. Those procedures relate only to *refunding* of existing projects or grants.

New VISTA project proposals, whether submitted by existing or new sponsoring organizations, will be treated on an equal basis in order to provide all potential sponsors with equal access to the scarce VISTA volunteer resource in a certain programmatic area. If the existing VISTA sponsor can most effectively manage a VISTA project in a new programmatic area, that organization will be selected as the project sponsor. The will not be regarded, however, as *renewal* of the organizations's previous project, but rather as a totally new effort. If however, another organization is selected, the existing VISTA sponsor will be provided with reasons for the disapproval of the new project.

Part I—Program Directions

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA provides full-time volunteers to local public and private non-profit organizations which have goals in accord with the VISTA mission. VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

Part II—Criteria for Selection of VISTA Sponsors and Projects

A. Criteria

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of new and renewal VISTA projects. All of the stated elements below must be found in the applicant's proposal. The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to VISTA and all applicable published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable or verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available for volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

B. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project applications questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as states? Is a proposal requesting one VISTA Volunteer of such worth as to make development worthwhile?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

C. Prohibited Activities

Applicant and current sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

2. VISTA sponsors are prohibited by law from:

(a) Carrying out projects resulting in the identification of such projects with partisan and nonpartisan political activities, including voter registration activities and providing voters with transportation to the polls.

(b) Assigning volunteers to activities which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) Requesting or receiving any compensation for the services of volunteers.

3. VISTA Volunteers are prohibited from engaging in any religious activities as part of their duties. VISTA sponsors are prohibited from conducting any religious instruction, worship, proselytization or other religious activity as part of a VISTA project.

Part III—VISTA Project Approval Process

A. Project Approval Process for New Sponsors

In order to assure all potential sponsors equal consideration, the VISTA project approval process for new projects described below is to be followed.

1. When a potential sponsor contacts an ACTION State Office to apply for VISTA resources the State Office will send the sponsor a Preliminary Inquiry Form or a VISTA Project Application Form. State Offices will provide applicants with technical assistance and additional instructions necessary to plan proposed project activities.

(2) Completed VISTA Project Application forms will be reviewed by the State Director as they are received.

(a) Potential projects which the State Director determines to be out of compliance with VISTA legislation and guidelines will be disapproved with the applicant agency/organization notified in writing of the reasons for disapproval.

(b) Potential projects that meet minimum VISTA requirements will be assessed by the State Director in terms of the Additional Factors noted in Section II B above, evidence of local support, the overall quality of the project application, the State programming strategy (e.g. rural/urban program focus, etc.), and the availability of VISTA resources within the State.

3. At least 80 days prior to the planned projects' start dates, the State Director will forward to the ACTION Regional Office all VISTA project applications recommended for placement of VISTA Volunteers.

4. The Regional Director will review the State Director's recommendations and transmit to the Director of VISTA, at least 45 days prior to the planned projects' start dates, all project application packages deemed suitable for VISTA Volunteer placements along with recommendation memos from the State and Regional Offices.

Project applications not transmitted to the VISTA Director by the Regional Director will be returned to the State Director who will, in turn, notify the applicant organization(s) of the reasons for the projects' non-selection.

5. The Director of VISTA will notify the Regional and State Directors of final decisions on new VISTA project applications within 45 days of receipt. Formal action necessary to implement the decisions will be taken by the State Director after all approved VISTA Project Application forms and necessary auxiliary documents (e.g. Memorandum of Agreement, Memoranda of Understanding) have been reviewed for compliance by the Regional Director.

6. The Regional Office will forward a copy of the complete project document file to VISTA Headquarters. Official project document files will be retained in the Regional Office.

B. Project Approval Process for Existing VISTA Sponsors

All VISTA projects will be reviewed at the time of their renewal request to determine the extent to which the projects are mobilizing support from the community and planning for community continuance of the volunteers' activities.

1. The project approval process outlined below is to be followed for all VISTA sponsors seeking renewal for a *second* or *third* year of operation of their existing VISTA project.

a. Project applications from existing sponsoring organizations which desire renewal of their present VISTA projects, i.e. continuation of the VISTA volunteer activities and/or program issue area(s) previously approved, for a second or third year of operation should be submitted to the ACTION State Office at least 115 days prior the end of the current project period.

b. The State Director will review the renewal project application, as well as quarterly VISTA Project Progress Reports which have been submitted during the current project period. The State Director will transmit the complete project renewal package to the Regional Director, along with a recommendation for continuance or non-continuance of the VISTA project, at least 80 days prior to the end of the current project period.

c. If the Regional Director approves the renewal project application, the project will be continued for one year subject to the availability of funds. Formal action necessary to implement the approval decision will be taken by the State Director after all approved VISTA project application forms and auxiliary documents (e.g. Memorandum of Agreement, Memoranda of Understanding) have been reviewed for compliance by the Regional Director.

d. The Regional Office will forward a copy of the complete project document file to VISTA Headquarters. Official project document files will be retained in the Regional Office.

e. If the Regional Director disapproves the renewal project application, the sponsoring organization will be notified by the Regional Director at least 75 days in advance of the end of the current project period that ACTION intends to deny the application for renewal. The sponsor will be given reasons for the tentative decision and an opportunity to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR, Part 1206, Subpart B.

f. If the current sponsor participates in an informal meeting, the information presented by the sponsor at that meeting, as well as a report of the meeting and recommendations of the Regional Director, will be forwarded within five (5) working days of the meeting to the Director of VISTA for a final decision on the project's renewal application. The project will be continued at its existing level of volunteer and project support pending a final decision by the Director of VISTA.

g. Where a final decision denies project renewal, VISTA volunteers whose terms of service extended beyond the project's expiration date are covered by the provisions of 45 CFR Part 1210.3–2.

2. The project approval process outlined below is to be followed for:

a. All existing VISTA projects seeking continuation for a *fourth* year or longer of the previously approved VISTA volunteer activities and/or program issue area(s); or

b. All existing VISTA projects seeking an increase of 5 or more volunteers from their previously approved level of volunteers; or

c. All existing VISTA sponsors seeking to *change* the programmatic emphasis(es) of the VISTA project and/or substantially *change* the scope of the activities and duties performed by the volunteers (e.g. from literacy to job development, or from agricultural production activities to development of food buying clubs).

(1) Project application should be submitted to the ACTION State Office at least 115 days prior to the beginning of the proposed project period. The State Director will review the project application, as well as quarterly VISTA Project Progress Reports for the current project period and evidence of local support for the proposed project's activities.

(2) At least 80 days prior to the beginning of the project period, the State Director will transmit the complete project package to the Regional Director, along with a specific justification for the continuance of the current project beyond a third year, or a recommendation regarding the sponsor's revised programmatic emphasis or volunteer activities.

(3) The Regional Director will review the project package and State Director's recommendations and transmit to the Director of VISTA, at least 45 days prior to the start of the project period, any application package deemed suitable for VISTA volunteer placements along with recommendation memos from the State and Regional Offices. The Director of VISTA will render the final decision on the project applications package within 45 days. The ACTION State and Regional offices will take formal action to implement the VISTA Director's decision.

(4) If the project application requesting renewal of a current VISTA project for a fourth year or longer, as defined in Part III B2 above, is disapproved at the State, regional or national level, the sponsoring organization will be notified at least 75 days in advance of the end of the current project period that ACTION intends to deny the application for renewal. The sponsor will be given reasons for the tentative decision and an opportunity to show cause why the application should not be denied in accordance with section 412 of the Domestic Volunteer Service Act of 1973, as amended, (enacted May 21, 1984), and 45 CFR, Part 1206, Subpart B, (effective March 25, 1982).

(5) If the sponsor participates in an informal meeting, the information presented by the sponsor at that meeting, as well as a report of the meeting and recommendations of the Regional Director will be forwarded within five (5) working days of the meeting to the Director of VISTA for a final decision on the project's renewal application. The project will be continued at its existing level of volunteer and project support pending a final decision by the Director of VISTA.

(6) Project applications from current VISTA sponsors proposing to change the programmatic emphasis(es) or substantially change the scope of activities and duties performed by the volunteers from those previously approved are not subject to the denial of refunding procedures contained in section 42 of the Domestic Volunteer Service Act of 1973, as amended, and 45 CFR Part 1206, Subpart B. Such applications will be treated as new project applications in accordance with the procedures outlined in III A (2) above.

3. Added - See Appendix 2

C. Extensions of Current VISTA Projects

In limited circumstances, current VISTA sponsors may wish to extend previously approved projects for up to six months in order to allow already-assigned VISTA volunteers to complete their term of service, and/or to conclude activities designed to institutionalize the efforts of VISTA Volunteers when ACTION/VISTA no longer provides Volunteers.

In such instances, the VISTA sponsors will send to the ACTION State Office, at least 60 days prior to the end of the current project period, a detailed justification, along with Section III of the VISTA Project Application form, describing the activities to be performed during the extension period.

The State Director will review the project extension request and transmit it, along with a recommendation memo, to the ACTION Regional Director at least 45 days prior to the end of the current project period.

The ACTION Regional Director will render a final decision on the project extension request within 20 days.

If the request is approved, the ACTION State and Regional Offices will take formal action to implement the decision including extension of the current Memorandum of Agreement.

The Regional Office will forward copies of all project extension documents to VISTA Headquarters. Official project document files will be retained in the Regional Office.

Denial of project extension requests of six months or less are not subject to the denial of refunding procedures contained in section 412 of the Domestic Volunteer Service Act of 1973 as amended (enacted May 21, 1984), as 45 CFR Part 1206, Subpart B (effective March 25, 1982).

D. Intergovernmental Review of VISTA Projects

Agencies and organization submitting new or renewal VISTA project applications must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

E. Governor's Approval of VISTA Projects

No volunteers may be assigned in any State until the Governor or other Chief Executive Officer of the jurisdiction concerned has been given 45 days within which to disapprove the proposed project's submission.

Governor's approval must be sought by the ACTION Regional Director (or designee) for all new VISTA projects, as well as for ongoing projects which are requesting an increase in their volunteer numbers or substantially changing their volunteer activities.

F. Freedom of Information Act Requests Related to VISTA Project Reviews.

All Freedom of Information Act (FOIA) requests generated by the project review process shall be directed to the FOIA Officer in ACTION Headquarters for reply (even if initially addressed to the State or Regional Office).

(42 U.S.C. 4951, 4952, and 4953)

Dated in Washington, D.C. on July 26, 1985.

Daniel F. Bonner,

Acting Director, Action.

[FR Doc. 85-18100 Filed 7-30-85; 8:45 am]

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Notices

Federal Register
Vol. 55, No. 49
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Guidelines; Final Notice

AGENCY: Action.

ACTION: Amendment to final notice of VISTA guidelines.

SUMMARY: On July 31, 1985, ACTION published in the **Federal Register** a Final Notice of VISTA Guidelines under which the VISTA program operates. This Amendment incorporates new language required under Public Law 101-204, enacted December 7, 1989, which amended Title I, part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113).

DATES: This Amendment to the Final Notice of VISTA Guidelines is effective immediately.

FOR FURTHER INFORMATION CONTACT: Patricia A. E. Rodgers, Assistant Director of VISTA and Student Community Service Programs, ACTION, 1100 Vermont Avenue, NW., Suite 8100, Washington, DC 20525, (202) 634-9445.

SUPPLEMENTARY INFORMATION: The Final Notice of VISTA Guidelines, as published in the **Federal Register**, July 31, 1985, set forth the programmatic direction of the VISTA program, selection criteria for VISTA sponsors and projects, and VISTA project approval procedures. The 1989 amendments to the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113, as amended) added a new section 110 to Title I, part A of the Act. That section (42 USC 4960) requires that any regulation or guideline issued for the VISTA program contain the verbatim language of each of subsections (a) through (e) of section 110.

Accordingly, part III B of the Final Notice of VISTA Guidelines—Project Approval Process for Existing VISTA Sponsors—is revised to incorporate new section 3 which incorporates that verbatim language and reads as follows:

3. Applications for Assistance by Previous Recipients.

(a) Duration.—The Director shall not deny assistance under this part to any project or program, or any public or private nonprofit organization, solely on the basis of the duration of the assistance such project, program, or organization has previously received under this part.

(b) Consideration of Application.—The Director shall consider each application for the renewal of assistance under this part to any project or program on an individualized, case-by-case basis, taking into account—

(1) The extent to which the sponsoring organization has made good faith efforts to achieve the goals agreed on in the application of such project or program; and

(2) Any extenuating circumstance beyond the control of the sponsoring organization that may have prevented, delayed, or otherwise impaired the achievement of such goals.

(c) New Project or Program.—The Director shall consider each application for assistance under this part for a new project or program, that is submitted by a public or private nonprofit organization that has previously received such assistance (so long as such new project or program is clearly distinct from activities for which the organization has previously received such assistance), on an equal basis with all other applications for such assistance and without regard for the fact that the organization has previously received such assistance.

(d) Renewal of Assistance.—With respect to any consideration that relates to the duration of assistance under this part and that is applied by the Director in the case of a request for a renewal of assistance under this part, the Director may not apply any such consideration against any entity that is—

(1) Functioning as an intermediary between the Director and organizations requesting such renewal and ultimately receiving such assistance; and

(2) Utilized by such organizations—

(A) to prepare and submit applications for such assistance to the Director; and

(B) to perform other administrative functions and services associated with applying for and receiving such assistance.

(e) Eligibility.—All eligible public and private nonprofit organizations shall be able to apply for assistance under this part.

Authority: 42 U.S.C. 4960.

Signed at Washington, DC this fifth day of March, 1990.

Jane A. Kenny,
Director, ACTION.

[FR Doc. 90-5617 Filed 3-12-90; 8:45 am]

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16422

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Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Program; Supervision and Transportation Support Guidelines

AGENCY: ACTION.

ACTION: Final Notice of VISTA Supervision and Transportation Support Guidelines.

SUMMARY: The following notice sets forth Final Guidelines for VISTA Supervision and Transportation Support. This Notice replaces VISTA Supervision and Transportation Support Guidelines which were published in the Federal Register, February 5, 1975 (40 FR 5388). The Notice describes the circumstances under which ACTION may contribute support for VISTA Volunteer on-the-job transportation and/or supervision costs.

DATE: These Guidelines shall take effect June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Diana London, VISTA Branch Chief, ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525, (202) 634-9424.

SUPPLEMENTARY INFORMATION: Pursuant to section 105(b) of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113), the Director of ACTION shall provide VISTA Volunteers such transportation and supervision support as deemed necessary and appropriate, and shall insure that each volunteer has available such support as will enable the volunteer to effectively perform the work to which the volunteer is assigned.

Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guideline, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) were published in proposed form for comments.

A Notice of Proposed Revisions to the VISTA Supervision and Transportation Support Guidelines was published in the Federal Register on March 2, 1987 (52 FR 6201). No written comments from the public were received by the Agency. Therefore, the revisions originally proposed are hereby incorporated into the Final Guidelines without further modification.

Implementation

These Guidelines apply to all VISTA Volunteer supervision and/or on-job transportation support grant applications submitted to ACTION on or after the effective date of this Notice.

1. Purpose

Section 105(b) of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended, requires the Director of ACTION to ensure that each Volunteer serving under Title I, Part A of the Act has available such allowances and support as will enable them to carry out the purpose and provisions of the Act and to perform their assignments effectively. In accordance with section 105(b) and these guidelines, ACTION may make a commitment through a grant, agreement, or other arrangement with a sponsor to pay for on-the-job transportation and supervisory support of such Volunteers.

This order establishes the policy and guidelines for determining:

a. The circumstances under which grants or other arrangements for ACTION contributions to on-the-job transportation expenses of VISTA Volunteers may be negotiated between ACTION and the sponsor; and

b. The circumstances under which grants or other arrangements for ACTION contributions to the cost of providing supervision for VISTA Volunteers may be negotiated between ACTION and the sponsor.

2. Scope

Provisions of this policy and guidelines apply to VISTA sponsors and Volunteers serving under Title I, Part A of Pub. L. 93-113, as amended.

3. Background

While ACTION/VISTA must ensure that Volunteers have available such allowances and support as will enable them to perform their project assignments effectively, the provision of adequate on-the-job transportation and supervision for VISTA Volunteers is primarily the responsibility of the project sponsor.

ACTION/VISTA recognizes, however, that in some instances sponsoring organizations requesting Volunteers for projects that conform to ACTION/VISTA's programming criteria may need assistance in providing this support. ACTION Regional Offices are provided with limited obligational authority for the purposes of entering into transportation and/or supervision arrangements with VISTA project sponsors.

When such arrangements are established with a sponsoring organization, they are to provide for the direct support of Volunteer transportation and supervision. They are not intended to provide for other support needed to accomplish the goals of the project. All other overhead expenses such as supplies, materials, and equipment are the sole responsibility of the sponsoring organization.

4. Policy

ACTION/VISTA will provide full or partial funding for on-the-job transportation of VISTA Volunteers and/or for hiring of persons responsible for supervision of the Volunteers, but only in those cases where such support is deemed by the ACTION Regional Director to be:

(1) Necessary to the effective functioning of the Volunteers on the project, and

(2) Within these guidelines.

a. In all such cases, except as noted in Paragraph 7a below, the transportation and/or supervision arrangements will provide for a phase-down of ACTION support after the first year of the project and the gradual assumption of this support by the sponsoring organization over the life of the VISTA project. The Memorandum of Agreement negotiated between ACTION and the sponsoring organization will reflect a decreasing level of ACTION provided project support in the subsequent year(s) of the

VISTA project. The sponsor will be required to assume at least 10% of the original amount of ACTION-provided project support costs for supervision and/or transportation in each of the subsequent funding periods.

Although subsequent Memoranda of Agreement, except as noted in Paragraph 7a below, will reflect a decrease in ACTION funding support, they will not reflect a decrease in the level of effort. However, if a change in the level of effort, as negotiated between ACTION and the sponsor, results in a decrease, or increase, in volunteer strength in the subsequent year(s) of the VISTA project, the level of project support provided by ACTION and the sponsor will be proportionately adjusted.

b. When a supervision and/or transportation arrangement is approved, the nature of the agreement between ACTION and the sponsor will be reflected in the Memorandum of Agreement. Any Agreement whereby ACTION/VISTA provides funds for these purposes will include provision to ensure that:

(1) Services are furnished at a reasonable rate:

(2) The rate conforms to sponsor's hiring policies and/or local prevailing salary levels;

(3) Any expense incurred by the sponsoring organization over the agreed amount will be at its own expense.

c. In developing new projects, State Offices shall take into account the travel and supervisory requirements of the proposed project. When possible, attempts should be made to develop projects so that a minimum of volunteer transportation, consistent with the needs of the project, is required, and so that supervisory responsibility can be readily absorbed into the existing structure of the organization. ACTION/VISTA project support funds will be provided only when the needs of the VISTA project and the assigned VISTA Volunteers cannot be met by the sponsor's own structure and resources.

5. Guidelines for Transportation Arrangements

The Regional Director will establish the following facts before approving provision of ACTION funds to support on-the-job transportation for VISTA Volunteers:

a. Necessity of transportation for Volunteers to achieve the goals/objectives of the project as outlined in the project application;

b. Inability of the sponsoring organization to provide adequate transportation;

c. Prohibition against using ACTION-provided on-the-job transportation funds to transport Volunteers to and from their regularly assigned post, or to transport or provide delivery services to members of the target population.

The Regional Director will consider budget constraints, available resources, and program and geographic priorities in distributing VISTA on-the-job transportation funds.

6. Guidelines for Supervision Arrangements

The Regional Director will establish the following facts before approving provision of ACTION funds to support on-the-job supervision of VISTA Volunteers:

a. Necessity of full or part-time supervision for Volunteers to achieve the goals/objectives of the project as outlined in the project application;

b. Inability of the sponsoring organization to provide adequate supervision;

c. Number of VISTA Volunteers assigned to the project during the period covered by the Memorandum of Agreement:

(1) ACTION will not fund a full-time supervisory position on a project which averages fewer than eight Volunteers over the course of the Agreement. Regional Directors may, however, reduce this requirement in the case of first-year supervisory grants to grassroots sponsoring organizations as defined in Paragraph 7a below.

(2) Projects averaging 3 or fewer Volunteers over the course of the Agreement will not be eligible for any ACTION supervisory funding.

d. Less than full-time supervision may be funded by ACTION if:

(1) At least an average of 4 volunteers serve on the project during the term of the Agreement; and

(2) The supervisor(s) spends at least 50% time directly supervising the VISTA Volunteers, with ACTION funding up to 50% of the salary(ies).

The Regional Director will consider budget constraints, available resources, and program and geographic priorities in distributing VISTA supervision funds.

7. Procedures for Determining Conformance to Guidelines

In order to determine the applicability of the guidelines for supervision and/or transportation grants (paragraphs 5 and 6 above), ACTION Regional Directors will use the following standards:

a. Grassroots organizations which are under the operational policy direction of members of the group that the organization is designed to serve, with limited budget and staff, are eligible for up to 100 percent ACTION funding of transportation and/or supervision needs in the first year of the VISTA project. The phase-out funding schedule described in Paragraph 4 above may be waived by the Regional Director for up to three years for grass roots project sponsors, umbrella sponsors of grassroots project components, and tribal governments.

b. Large, well-established non-profit organizations or institutions with sizable budgets and staffs may be considered for ACTION funding of volunteer on-the-job transportation and/or supervision if necessary for the effective functioning of Volunteers on the project.

However, such organizations will receive a lower priority in the awarding of ACTION project support grants than those in category a. above, and no waiver of the phaseout funding schedule is allowed.

In determining the level of resources provided to large, well-established organizations, ACTION will take into consideration the resources, or access to resources, already enjoyed by the organization as well as the needs of the VISTA project.

c. Federal, State and large, local government agencies are eligible for ACTION funding of volunteer transportation and/or supervision only in the first year of a project's operation. This one-year restriction does not apply, however, to small local government agencies and to tribal governments.

Government agencies will receive a lower priority in the awarding of ACTION project grants than those in categories a. and b. above.

8. Elimination or Reduction of Transportation and/or Supervision Funding

a. As a general rule, the level of funding contained in an ACTION project support grant will be maintained throughout the term of the annual Memorandum of Agreement between ACTION and the sponsoring organization. However, types of conditions which may cause the reduction or elimination of project support during the term of the annual Agreement are:

(1) Amendment by mutual agreement between ACTION and the sponsor;

(2) Termination by the sponsor for any reason;

(3) Reassignment, resignation, or termination of Volunteers from the project before their term of service has ended with no replacements during that budget year;

(4) Substantial changes in volunteer assignments; or

(5) Suspension or termination in accordance with 45 CFR Part 1206, Subpart A.

b. All VISTA project support Notices of Grant Award will contain language indicating that the grant may be reduced or eliminated in accordance with the provisions of this Order and the Memorandum of Agreement.

Signed at Washington, DC this 27th day of April, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87-10104 Filed 5-4-87; 8:45 am]

BILLING CODE 6050-28-M

THE FEDERAL DOMESTIC VOLUNTEER AGENCY
ACTION
U.S.A.

OFFICE OF THE DIRECTO
1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

March 18, 1993

Jack —
Would like your considered opinion. (Let's circulate to others, eg. Galston, Sagawa, Edelman unless you feel otherwise).
Eli

TO: Eli Segal
Director
Office of National Service

FROM: John Seal John Seal
Acting Director

SUBJECT: Discussion Outline on National Service

Thank you for the opportunity to comment on the outline of the national service proposal. I had the opportunity to discuss the proposal at length with Rick and Jack on Friday and agreed that it would be best for me to put into writing our thoughts as well as some feedback from various program representatives.

Definition of National Service

A major point of confusion for many people is understanding exactly what the Administration defines as "National Service." The paper is vague in defining National Service as either an "umbrella" of volunteer programs (and possibly other "community service" and public service job programs) or a specific program linking youth service with educational benefits. We suggest that National Service be defined as the former; i.e., an umbrella of public service programs (including ACTION programs and Peace Corps) with the "centerpiece" program given another distinct name - perhaps closer to its combined education and service character.

We believe it is important for "National Service" to embrace existing volunteers and all ages of service participants and to support budgetary expansion of proven service programs in FY 1994 so that the President's commitment to service is not viewed narrowly by those who are not eligible for the "centerpiece" initiative. The key word is "inclusion." To ensure that National Service is perceived to be intergenerational, we believe that targeted growth in the Older American Volunteer Programs can have significant benefits at relatively modest costs.

Placement of VISTA Volunteers

Turning to the National Service program as outlined, the paper appears to follow closely the vision in the Commission on National and Community Service's annual report. We strongly endorse the recognition that service as a VISTA Volunteer is an appropriate placement within an "umbrella" definition of the President's new program. However, there are some issues that must be resolved to maximize the benefit of this inclusion, to further the mission of VISTA, and to help ensure the broadest possible support for a National Service proposal. For example, some have interpretated the outline as indicating that VISTA placements would be made through the recommended State Commissions rather than directly by local projects and ACTION. As discussed in the Friday meeting, this interpretation is apparently incorrect and there is no intention to restructure the current VISTA placement system. **Clarification is needed in the paper, however, on VISTA remaining a direct placement program.**

Linkage Between VISTA and National Service Centerpiece Program

It is important for us to work out where we want the programs to be comparable, especially in terms of benefits, and where they should be distinct. The major issues as we see them are as follows:

1. Program Focus. VISTA's essential purpose is to address the causes and conditions of poverty. As such, it is focused on low-income areas, includes a wide variety of program activities, and places heavy emphasis on recruiting and supporting Volunteers from the areas being served. It also enables other Volunteers to be placed in different parts of the country from their own, thereby bringing special skills to areas and providing an enriching experience for the Volunteers. **The proposal does not clearly define a specific focus (e.g., anti-poverty), but the activity areas of education, human services, environment and public safety are certainly complementary with VISTA.**

2. Living Allowances. Paying a minimum wage implies an hourly remuneration for time worked. Many service programs, such as VISTA, do not reflect such payment structures. VISTA's annualized allowance currently averages $7,440 (an average of 105.8% of the poverty level for a single individual); the paper mentions a minimum-wage stipend (about $8,800) but I understand it really was meant to be roughly equivalent to the lower VISTA allowance. Volunteer programs with living allowances avoid the phrase "minimum wage" because of the implication that it is work rather than service. **Clarification in the outline is needed.**

3. Income Disregard. VISTA eligibility includes an income disregard for families/individuals receiving public assistance as long as allowances are below the minimum wage. This provision allows those in families receiving public assistance to serve as VISTA Volunteers at no financial penalty and provides a strong incentive for low-income volunteers to enroll, serve, learn skills, and move on to a permanent job. The outline does not mention such an income disregard. **We would want to keep this feature of VISTA service.**

4. Health Benefits. Both VISTA and the outlined proposal include health care benefits. ACTION self-insures the VISTA Volunteers with annualized costs of about $1,800 per Volunteer. The VISTA health plan only covers the Volunteer. Health costs have been a rapidly escalating component of the program and while we have taken measures in the last couple of years to contain costs, it remains a concern for us. **We are available to brief you or your staff on the VISTA health program experience.**

5. Child Care Benefits. The proposal mentions child care benefits. VISTA does not pay for any child care benefits. With the income disregard, provision, however, those eligible for publicly assisted child care maintain that eligibility. **We need to discuss further with you whether additional child care benefits are appropriate for VISTA in light of what is being considered for the proposed program.**

6. Educational Benefits. Differences in current educational benefits between VISTA and the proposal are very significant and may affect VISTA recruitment of younger volunteers if the two programs are not comparable. Currently for VISTA, repayment for both Stafford Loans (Guaranteed Student Loans) and Perkins Loans (National Direct Student Loans) is deferred while one serves as a VISTA Volunteer (interest may accrue). A percentage forgiveness on Perkins loans is allowed for each year of VISTA service (15% of a Volunteer's total loan obligation will be cancelled for each of the first two years of VISTA service and 20% will be cancelled for each of the third and fourth years of VISTA service). It should also be noted that in the 1992 Higher Education Amendments, there is authority, but not a guarantee, to provide for Stafford loan cancellations at the rate of 15% each of the first two years, 20% the third year and 30% for a fourth year of service in VISTA, Peace Corps or a "comparable" service with a tax-exempt organization. It applies to new borrowers

after October 1, 1992, but it has not been funded to date. In any case, we believe it is important for our recruitment efforts that VISTA's educational benefits and those of the proposed program be reasonably comparable.

The last significant remaining linkage needed between VISTA and the proposal is budgetary in terms of how many VISTA slots will be funded under a National Service "umbrella". In addition, I understand from your meeting with Peace Corps earlier this week that they would like to find a way to assist returning Peace Corps members to continue to serve for another year at home. VISTA is an obvious choice and we would love to have that sort of enrichment of experienced Volunteers. We want to pursue that opportunity for program linkage with you and the Peace Corps.

Role of the States

Section 103(g) of the Domestic Volunteer Service Act authorizing VISTA states that Volunteers cannot be assigned to a project unless the project's application demonstrates local support and has been submitted to the Governor or other chief executive officer of the State. The Governor has 45 days to disapprove a project and, if a timely statement of reasons is submitted to ACTION by the State, ACTION will terminate the project or refuse to fund a new application. **It should be noted that such a disapproval has not occurred in many years.** This same procedure also applies to existing projects when there is an increased allocation of Volunteers or the program objectives of the assigned VISTA Volunteers substantially changes. In addition, all ACTION assistance, including VISTA, comes under Executive Order 12372, where applicants must deal with their State single point of contact or "clearinghouse" office.

In essence, the VISTA model keeps the State informed of project applications and major changes in VISTA assignments for existing projects. It also gives the State a type of "veto" authority. This role, however, is substantially different from the one envisioned in the outline.

Using the proposed funding model, we would note that there are cost trade-offs for directing grants through States (e.g., State overhead and administrative costs) and that small grassroots organizations would have difficulty competing with larger organizations with superior grantsmanship capabilities. States also frequently have a vested interest in supporting certain State-operated service programs.

We have found that our Regional and State offices have added an important dimension to ACTION's Federal/State relations. This structure has given us excellent access to State government and usually strong working relationships with key State staff. States are not charged with setting up their own bureaucracy to oversee our programs and yet have a partnership role in our funding decisions.

Finally, the structure has also enabled ACTION to provide intensive, supportive training and technical assistance while at the same time monitoring projects closely and keeping financial and fraud problems at a minimal level.

Local Matching Requirement

The outline indicates that a local matching requirement will be included in the program, but not how much of a match. In ACTION, we use three models for providing incentives for non-Federal support:

1. Each of ACTION's Older American Volunteer Programs require a local contribution. For Foster Grandparents and Senior Companions, the required contribution is 10%. The Retired Senior Volunteer Program (RSVP) requires 10% for the first year, 20% for the second year, and 30% for the third and remaining years. These projects tend to have low turnover.

2. Taking a different approach, our Student Community Services Program provides three-year grants for $20,000 the first year, $15,000 the second and $10,000 the third year with the assumption that local resources will pick up the full cost of the volunteer project by the fourth year.

3. VISTA has no legislative non-Federal support requirement, but project sponsors contribute supervision, transportation, supplies, etc. ACTION funds on a limited basis (less than $1 million annually) support grants to the generally smallest VISTA projects. VISTA project turnover normally occurs after 4 to 5 years. This cycle is encouraged through our State offices working with VISTA projects on setting objectives with timeframes, monitoring of projects and on-going ACTION technical assistance. This model, of course, is intrically tied into ACTION's organizational structure.

I would only point out that high matching requirements make it very difficult for smaller non-profit organizations (including grassroots organizations) to compete. Local and State governments, of course, have greater resources and taxing powers. A higher match may make sense if they are the primary applicants.

Validation of Service

The outline does not address responsibility for the validation of service and how it will occur. For VISTA, our payroll and personnel data base system provides both in-service and post-service validation. **[As I mentioned to Rick and Jack, we would be happy to provide a briefing on our payroll system.]** But if the program is to be administered through grants, we assume a very different procedure may have to be developed. Further, attention needs to be given to how the use of post-service benefits will be monitored.

Placements in Federal Agencies

During a meeting of the Interagency Committee on Volunteerism at ACTION on Tuesday, Peter Edelman mentioned an interest in making it possible for National Service volunteers to be placed with Federal agencies.

In that regard, Section 402 of the Domestic Volunteer Service Act includes a unique provision that "... authorizes the Director to ... (6) accept voluntary or uncompensated service." While this provision has been used sparingly and possible conflicts with other laws regarding uncompensated service in the Federal government would need to be reviewed, it has the potential to open up thousands of opportunities for placement of volunteers under National Service while at the same time saving Federal administrative funds. All Federal agencies, for example, have difficulty fulfilling their obligation to hire persons with disabilities because of a need for interpreters, readers, and other kinds of personal assistance. Many also have specific missions that make them ideal as placement possibilities for National Service participants (e.g., the Forest Service, National Park Service, Bureau of Prisons). And there are innovative, multi-agency and/or intergovernmental ideas that do not see the light of day because of staffing constraints. National Service volunteers could step in to help make entrepreneurial ideas more of a reality within the Federal government. We would be pleased to explore with you using ACTION as a vehicle for identifying National Service opportunities with Federal agencies and facilitating placements.

Other Issues

Two other issues will be important as the proposal is further developed:

1. What standards will be used for project/program approval and will they be national or State standards?

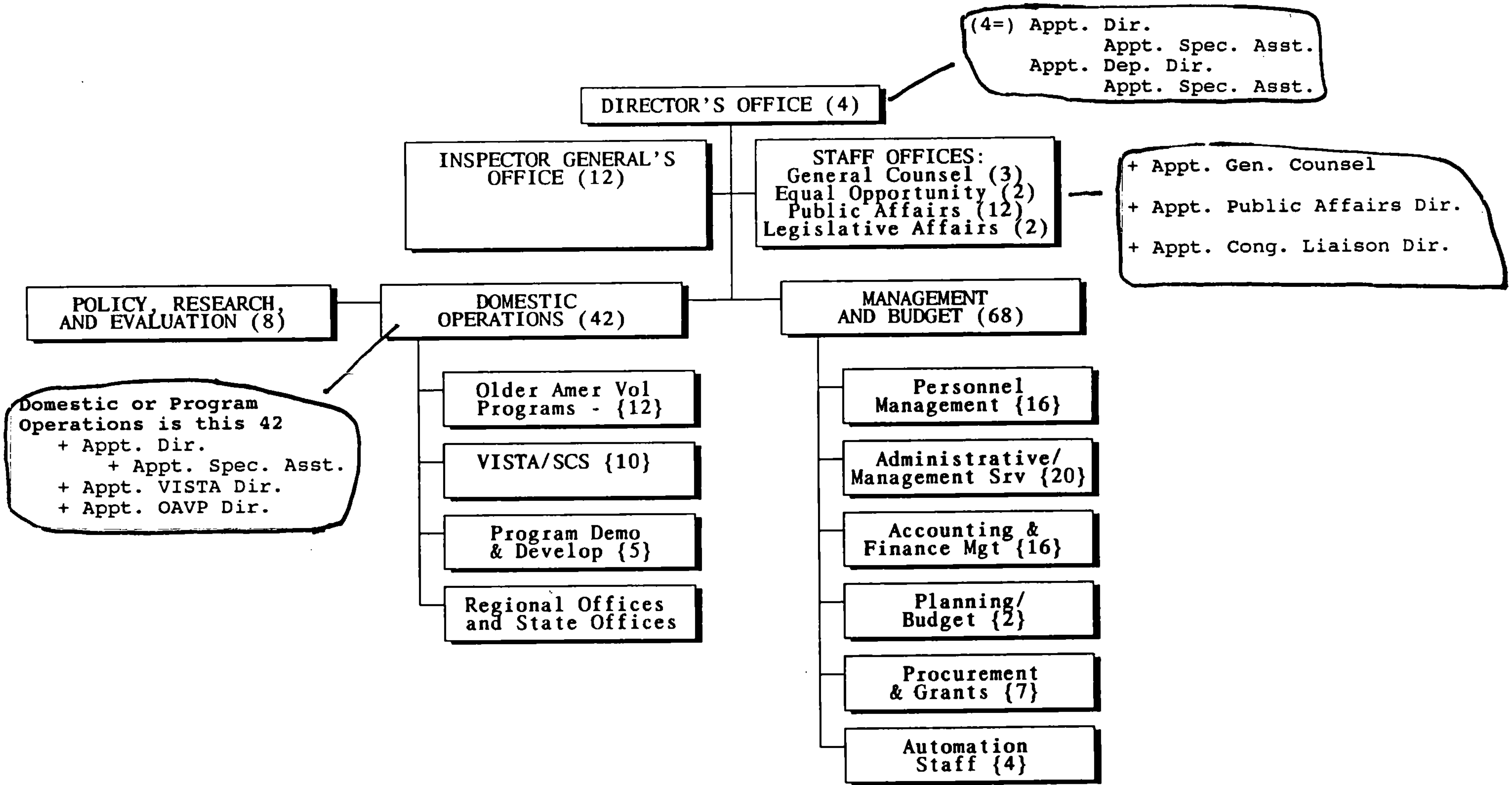
2. How will fraud, waste and abuse be minimized both initially in the program but also as the program substantially grows in the out-years?

I truly appreciate Rick and Jack's visit Friday since it significantly improved our understanding of the proposal outline. The ACTION staff would be pleased to work with your staff in clarifying and elaborating on any of the above issues, including directly contributing to the next round of program conceptualization. We are also available to brief your staff further on any of our program systems. Please feel free to call upon us.

cc: Rick Allen
Jack Lew
Judy Harrington
Phil Caplan

Rahm / Jack

ACTION ORGANIZATION AND STAFFING LEVELS



NOTE: All hdqts. staff (with exception of Personnel, Admin. & Mgt. Serv., EEO and IG) are direct parts of VISTA/OAVP program delivery structure.

Total Headquarters Staffing = 149
Total Field Office Staffing = 255
Total Permanent Employment = 404
March 1993

ACTION

REGIONAL FUNCTIONS: COORDINATES STATE OFFICES, PROJECT/VISTA APPROVAL, GRANTS MANAGEMENT/FINANCE, TRAINING, INTER-AGENCY & POLICY REPRESENTATION.

REGIONAL UNITS: PROGRAM & TRAINING, GRANTS MANAGEMENT, FISCAL & BUDGET, VISTA RECRUITMENT

With the exception of Boston and Seattle (which were grand-fathered career by Pres. Carter) the RD positions are political appointments, bringing to 18 the total number of non-career appts. in the agency at the conclusion of Bush Admin.

FIELD OFFICES

- Reg Office - Boston (10)
  5 - State Offices (14)
- Reg Office -New York (10)
  3 - State Offices (15)
- Reg Off-Philadelphia (10)
  6 - State Offices (21)
- Reg Office - Atlanta (12)
  7 - State Offices (27)
- Reg Office - Chicago (10)
  6 - State Offices (21)
- Reg Office - Dallas (13)
  7 - State Offices (24)
- Reg Office - Denver (8)
  5 - State Offices (16)
- Reg Office - San Fran (9)
  4 - State Offices (15)
- Reg Office - Seattle (10)
  4 - State Offices (14)

STATE FUNCTIONS: PROGRAM AND PROJECT DEVELOPMENT, TECHNICAL ASSISTANCE, MONITORING, LIASION WITHIN STATE.

Total State Office Staffing = 163
Total Regional Office Staffing = 92
TOTAL FIELD OFFICE STAFFING = 255
( ) = Number of Staff per Office

Corrected page comes

Regional Office Staffing

	Positions
REGION I (Boston)	A B (career) CC D EE F GGG count off
REGION II (New York)	A (appointed/vacant) B CC EE F GGGG
REGION III (Philadelphia)	A (appointed/vacant) B CC D EE F GGG
REGION IV (Atlanta)	A (appointed/hold-over) B CC D EE F GGGG
REGION V (Chicago)	A (appointed/vacant) B CC D EE F FFFF count off
REGION VI (Dallas)	A (appointed/vacant) B CC D EE F GGGG count off
REGION VIII (Denver)	A (appointed/vacant) B CC D EE F GG count off
REGION IX) (San Francisco	A (appointed/vacant) B CC D EE F GG
REGION X (Seattle)	A (career)B CC D E F GGG

CODES:

A = Regional Director
B = Executive Office
C = Program & Training Officer or Specialist
D = VISTA Volunteer Recruiter
E = Grants Management Officer or Specialist
F = Budget/Fiscal Analyst
G = Assistant/Secretary/Clerical

State Office Staffing

	Positions
REGION I	
Connecticut	A B C
Maine	A B C
Massachusetts	A BB D
New Hampshire/Vermont	A B C
Rhode Island	A D
REGION II	
New York	A E BBBBB C
New Jersey	A BB C
Puerto Rico/V.I.	A B C
REGION III	
Kentucky	A B C
Maryland/Delaware	A B C
Ohio	A BBB C
Pennsylvania	A BBB
Virginia/D.C.	A BB C
West Virginia	A C
REGION IV	
Alabama	A BB C
Florida	A BBB C
Georgia	A BB D
Mississippi	A B C
North Carolina	A BB C
South Carolina	A BB C
Tennessee	A B C

	Positions
REGION V	
Illinois	A BB C
Indiana	A B C
Iowa	A B D
Michigan	A BB C
Minnesota	A BB C
Wisconsin	A B D
REGION VI	
Arkansas	A B
Kansas	A B C
Louisiana	A B C
Missouri	A BB C
New Mexico	A B C
Oklahoma	A B C
Texas	A BBBB C D
REGION VIII	
Nebraska	A B C
Utah	A B C
Colorado/Wyoming	A BB D
Montana	A B C
North/South Dakota	A B C
REGION IX	
Arizona	A C
California	A E BBBBB C D
Hawaii	A D
Nevada	A D
REGION X	
Alaska	A
Idaho	A B C
Oregon	A BB C
Washington	A B C

CODES:
- A = State Program Director
- B = State Program Specialist
- C = Secretary (Typing)
- D = State Program Assistant
- E = Deputy State Program Director

SNAPSHOT OF APPOINTMENTS AT ACTION VOLUNTER AGENCY

(JAH 3-9-93)

(1) Director (PAS)
- (2) Special Asst./GS14

(3) Deputy Director (PAS)
- (4) Special Asst./GS11

(5) Director of Domestic Operations (PAS)
- (6) Special Asst./GS11

(7) Associate Dir. for VISTA/GS15

(8) Associate Dir. for OAVP/GS15

- (9) Regional Director, San Francisco/GS15
- (10) Regional Director, Denver/GS15
- (11) Regional Director, Dallas/GS15
- (12) Regional Director, Atlanta/GS15
- (13) Regional Director, Chicago/GS15
- (14) Regional Director, Philadelphia/GS15
- (15) Regional Director, New York/GS15

(16) General Counsel/NC-SES

(17) Public Affairs Director/GS15

(18) Congressional Liaison/GS15

OFFICE OF THE DIRECTOR

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

Facsimile Transmittal Sheet

TO: Jack Lew

LOCATION: ONS

FAX #: 456-6420 PHONE #: 456-6444

FROM: John Seal

COMMENTS: Re: Action Org

NUMBER OF PAGES (INCLUDING COVER SHEET) 3

IF THERE IS ANY PROBLEM WITH THIS TRANSMISSION, PLEASE CALL (202) 606-4880.

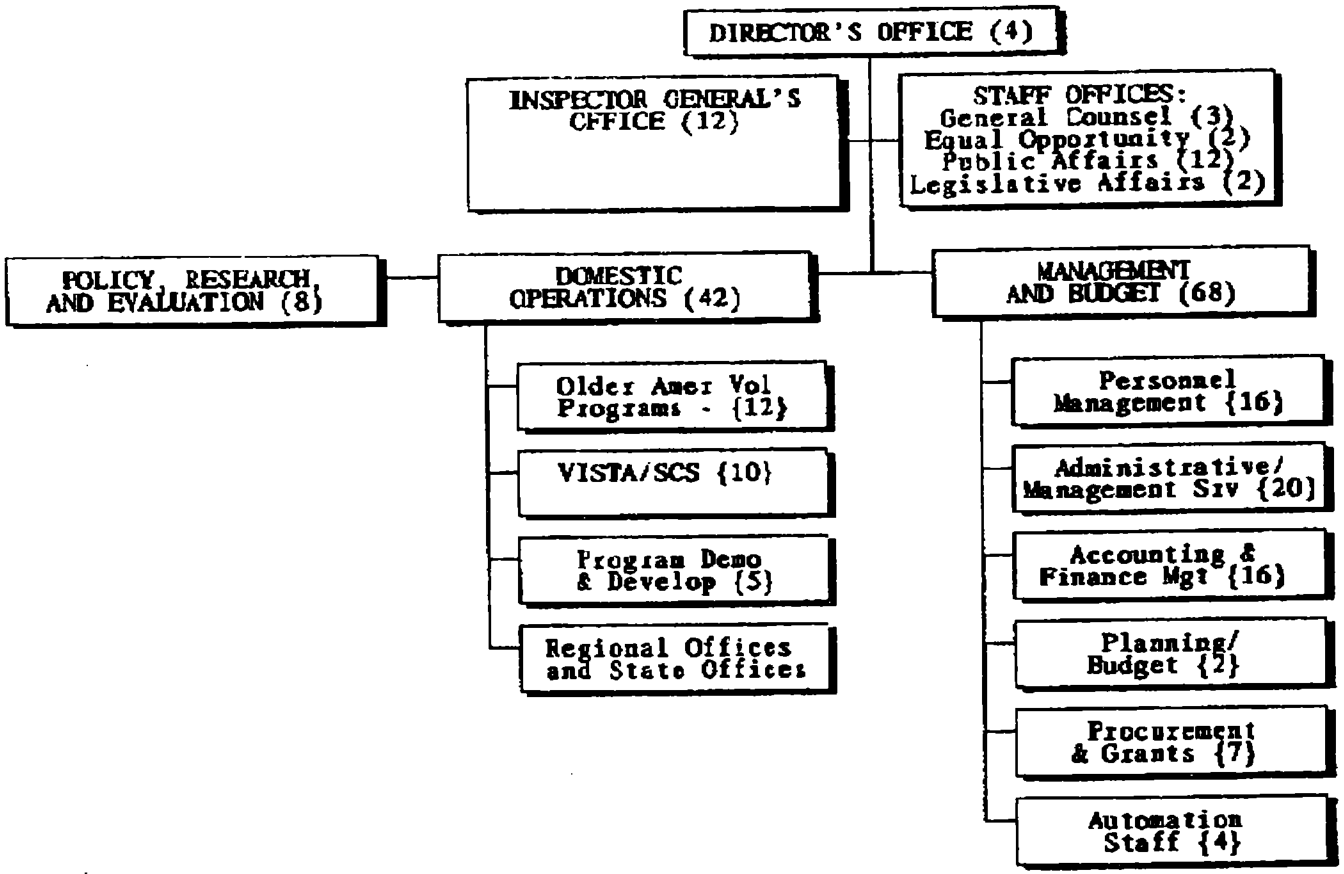
ACTION'S MISSION

To stimulate voluntary citizen participation in addressing the needs of American communities, particularly those of the poor, the disadvantaged and the elderly

ACTION ORGANIZATION AND STAFFING LEVELS

( ) = Staff totals by Office
{ } = Staff sub-totals for units

FUNCTIONS: POLICY, OVERSIGHT, GENERAL MANAGEMENT, EVALUATION, ADMINISTRATION



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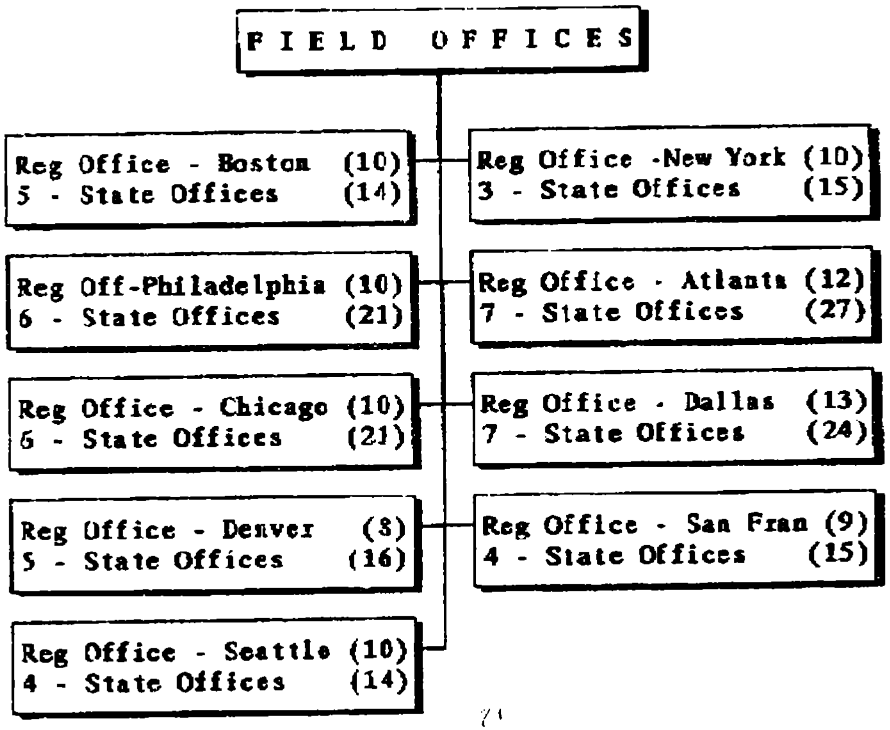
D1

ACTION

REGIONAL FUNCTIONS: COORDINATES STATE OFFICES, PROJECT/VISTA APPROVAL, GRANTS MANAGEMENT/FINANCE, TRAINING, INTER-AGENCY & POLICY REPRESENTATION.

REGIONAL UNITS: PROGRAM & TRAINING, GRANTS MANAGEMENT, FISCAL & BUDGET, VISTA RECRUITMENT



STATE FUNCTIONS: PROGRAM AND PROJECT DEVELOPMENT, TECHNICAL ASSISTANCE, MONITORING, LIASION WITHIN STATE.

Total State Office Staffing = 163
Total Regional Office Staffing = 92
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( ) = Number of Staff per Office

P.2

March 24, 1993

Mr. John Seal
Acting Director
ACTION
1100 Vermont Avenue, N.W.
Washington, D.C. 20525

Dear John:

Thank you very much for your recent memo to Eli, which he has reviewed with great interest and passed along to Jack and me. Jack will be contacting your Office soon to follow up on the variety of issues you've raised, but we wanted to thank you immediately, not only for providing the information, but also for the spirit and diligence with which you have always proceeded.

As I mentioned when I had dinner with Judy last evening, our internal operating procedure has been (in the brief time we've been here!) to always pose the most difficult questions we can think of at the time, and frequently to do so in a way which we hope will provoke debate. We have always considered you personally, and the Agency, to be vital parts of our inside team, and so are particularly appreciative of the opportunity to engage in this dialogue, as well as to increase our own command of the issues through your counsel.

We all look forward to discussing these matters with you in greater depth in the near future.

Very truly yours,

C. RICHARD ALLEN
Deputy Assistant to the President
Deputy Director, White House
Office of National Service

cc: Eli Seal
cc: Jack Lew

M E M O R A N D U M

DATE: March 18, 1993

TO: Paul Simon

FROM: Judy Wagner

RE: Discussion items for the Segal meeting

1. Don't lock out community-based, grass roots organizations. These small nonprofits will not receive volunteers if they have to compete for large grants. In addition, if "employers" of the volunteers are required to be certified, licensed or registered, it is doubtful small organizations - which may need only one or two volunteers - will be willing or able to comply with the paperwork requirements.

2. VISTA is low-cost and easily expanded. Current funding (including Literacy Corps) is $39.7 million, which funds 3366 volunteer service years. That $11,837 per volunteer pays for ALL costs: training and placement; support such as transportation; comprehensive health care coverage and coverage by federal employee compensation and federal tort claims act. It also covers the $95 per month end-of-service stipend (average $1140 per volunteer).

3. Based on ACTION agency estimates, VISTA could be expanded to 100,000 volunteers with the addition of just 75 new ACTION professional staff - just 1.5 new staff per state. No other full-time, fully supported volunteers can be placed as quickly with assurance they will be providing meaningful service.

4. Grants to governors are inherently political. Certain good programs will be locked out and those funded will pay back the favor. (Example: Literacy grant money through governors' offices has gone to people who subsequently endorsed the governor.) They prevent assurance the President's priorities will be carried out: e.g, for employment or health related initiatives.

5. The draft proposal indicates a high level of compensation for some volunteers ($10,000 per year for 2 years for tuition for those serving after college and $5000 for each of two years for tuition or job training for those serving before college.) In itself, this is discriminatory to those who are non-college graduates. It also creates a disincentive for persons to join Peace Corps or VISTA or other existing nonprofit and church-sponsored volunteer programs that are providing valuable service.

6. High post-service rewards create incentives based primarily on self-enrichment rather than self-sacrifice. Service is always a balance of the two, but this tips it too far to the wrong end.

7. ACTION has an effective mechanism for developing and monitoring grants through their state offices. It includes an Inspector General and independent evaluation arms. These structures assure accountability, which, eventually, Congress and the public will demand. A large national service program could easily go the way of the old CETA program if there are charges of abuses and no way to prove they were minor and remedied internally. Lack of built-in accountability will sow the seeds of the program's demise.

8. ACTION state offices are ESSENTIAL to the continued effectiveness of VISTA and the Older American programs (RSVP, Senior Companions, Foster Grandparents). These offices do both project development and monitoring and also provide technical assistance and support for the projects and volunteers. These services are a key part of why VISTA and Older American Programs are successful and cost-effective. Particularly dependent on these services are small, grassroots projects and those in rural areas. ACTION state personnel have experience, networks and cooperative relationships of extraordinary value. It will be needlessly expensive and very disruptive to try to duplicate or replace these services and supports.

9. A major piece needs to be focused on anti-poverty. This does not have to be narrow and restrictive. VISTAs work on the broadest possible array of issues, from environmental to educational. Another piece must be increased volunteer opportunities for seniors. Major expansion of the Older American Volunteer programs should be a priority.

10. Don't overlook authorities in the Domestic Volunteer Service Act. It has funded such demonstration programs as a Proctor and Gambel executives project in Cleveland, where businessmen helped inner-city organizations with their books. In the 1970s, it funded the National Student Volunteer Program (NSVP), which - with less than $1 million - stimulated volunteer service from more than a million students, mostly college age, across the country. The University Year for ACTION placed Pratt University architectural students into sweat-equity projects in the South Bronx, working next to regular VISTA volunteers. They were earning credits while getting experience and providing a lasting service through rebuilding neighborhoods. These authorities still exist in the Act, but are currently unfunded.

11. Suggestion: Since VISTA is so quickly and easily expanded, and because VISTAs are "capacity builders," do an initial substantial expansion of VISTA and use the VISTAs to build the capacity of community based organizations to accept large numbers of future volunteers from other parts of the national service program.

OFFICE OF THE DIRECTOR

ACTION

WASHINGTON D.C. 20525

Jack

Prepared by John + Tom here re: Regional Offices

Judy H

NO REGIONAL OFFICES - STATE OFFICES ONLY IN THE FIELD

State offices are viewed as customer friendly and have proven to be a key reason for ACTION's success with grass roots programming. Regional Offices, on the other hand, are less visible to most customers and are sometimes viewed as ~~as~~ unneeded, especially when state office decisions are reviewed by the region.

<u>Pro</u>

- Not having a regional structure flattens the organization and reduces staffing and administrative costs.
- State offices will be more empowered and possibly more entrepreneurial.
- Processing functions such as grants and financial management should be more efficient as volume grows, thus arguing for doing them on a centralized basis.
- Some of the representational and other functions associated with regional offices could be handled by state offices.

<u>Con</u>

- Oversight and coordination of state office programming and administrative operations will be diminished and more difficult if done from headquarters.
- Very small state offices that are programmatically or administratively weak will not have the benefit of technical support by people who are familiar with their circumstances.
- Grants and financial management functions will need to be rethought and reconstituted, probably requiring more centralization of responsibilities in headquarters.
- VISTA recruitment and VISTA/OAVP training will need to be centralized since state offices do not consistently have this competency.
- To the extent that there are benefits from working with other Federal agencies having field offices, a peer regional official co-located with those agencies in Federal regional cities is helpful.
- There will be some one time costs for severance and similar expenses.

CONSOLIDATED REGIONAL OFFICES

To provide intermediary support and direction for up to four dozen state offices, 3 "super" regional offices would be established. These offices would oversee state office operations; provide training, recruitment and representational support; and handle grants and financial management functions.

Pro

- Organization would have a means for relatively routine supervision of offices located in states.
- Takes advantage of economies of scale for processing functions and the need for a "critical mass" to maintain expert training and recruitment capabilities.
- State offices would be able to interact with knowledgeable program and technical staff without needing to sort through remote headquarters contacts.

Con

- Although reducing the regional management layer, this model does not eliminate it.
- The attention to supervision of state offices is diminished from the current structure with wider spans of control for each region.
- There may be a tendency to create "deputy" regional directors in order to improve state office oversight.

REGIONAL STRUCTURE LOCATED IN WASHINGTON, DC

A model used by the Equal Employment Opportunity Commission is to have "regional" structures that are located with the headquarters operation but that supervise field offices delineated along geographic lines.

Pro

- Incorporates such benefits of regional operations as reduced span of control and permitting staff to focus on area-specific programming.
- Since "regional" entities are co-located, creates a larger "critical mass" to achieve economies of scale.
- Allows for sharing among personnel having regionally related functions.

Con

- Being located outside of the Washington, DC area means "regional" employees will have a less reality based perspective of local/state programmatic, demographic, and political environments.
- Other primary advantages of regional operations, e.g., quality recruitment, reduced labor and administrative costs, are not achieved.
- Would tend to create a headquarters "top down" mentality rather than a two way partnership arrangement with state offices.

ESTABLISH GRANTS/FINANCIAL MANAGEMENT SERVICE CENTER(S)

Under this option, the organization would locate certain discrete functions, e.g. grants and financial management, in the field that lend themselves to remote operation. The service center(s) could be placed in a location selected because of cost and labor pool benefits.

Pro

- Takes advantage of lower labor, space, and other costs associated with locations outside mega-city areas.
- Allows for economies of scale for processing functions (e.g. grants processing, financial management), particularly in a more automated environment.
- Makes it easier to take advantage of emerging work site concepts (e.g. "telecommuting").

Con:

- Clarification would be needed on who resolves disputes between state offices and processing centers.
- Processing centers (with grants and fiscal staff) could appear remote and unresponsive to perceived program needs expressed by state offices.

DISCUSSION NOTE ~~TO JOHN~~
3/26/93

RE: VISTA benefits

What is the profile of the "locally recruited" VISTA? What is the liklihood that such volunteer would want tuition credit or training credit?

Does ACTION want (or does ONS want ACTION to) strongly shift to college-bound or college grad? If so, would we do so only through national recruitment or also by strong guidance to local project recruitment?

Regarding potential of tuition credit to VISTAs:

A. With such credit it would make the VISTA more like the NS volunteer and in that way "open up more slots" for Clinton's main thrust.

With such credit and the two volunteers being "equal", it would give ONS a way to test the "bang for the buck" of VISTA model vs. Commission model.

B. Without such credit, it keeps VISTA open to a different kind of volunteer, for a different kind of placement than the NS volunteer. It keeps another window open in the volunteer shop-----"have it your way".

C. Without commitment of the tuition credit, it's possible to sweeten VISTA some other way.....Stafford forgiveness....increase slots....increase end of service benefit.

What I'm saying is that a decision to advocate the $5,000 or not opens up larger questions.

Discuss
w/ Jack

If ~~[illegible]~~ no meeting, please indicate 6,500 5,000 or write ?

Decision on Benefit Meeting

Please indicate whether we should arrange for a meeting before the April 20 introduction target.

Yes	____
No	____
Need to discuss	____

Use of Educational Benefit

You have always talked about providing an educational benefit to pay for college and training. Many assumed that this would be applicable to graduate school as well. As a practical matter, by limiting the educational benefit to outstanding loans for college graduates, there will be numerous cases where outstanding loans are below the maximum benefit level and the full benefit cannot be utilized. In contrast, pre-college participants will presumably will use their full benefit in virtually all cases. ~~We can also expect pressure to allow benefits to be used for other purposes, such as downpayments on a first home.~~

Decision on use of benefits

Since we never discussed this issue, I would like to flag it for discussion or decision.

Benefits for college and training	____
Benefits for post-college education	____
Need to discuss	____

Maximum stipend

($7500 of which will come from the community in cash).

We are setting a federally supported stipend at minimum wage. We have always assumed that programs would be allowed to supplement these stipends with their own funds. We have never resolved whether there is a maximum stipend that should be allowed under our service program.

reconsider: Discuss w/ Jack - VISTA on poverty, vs. on min wage

The arguments for limiting stipends, is to avoid service slots with "real" salaries which might be inconsistent with the idea of service and which would attract political criticism. There is also a concern that if there is no limit, state and local government will find ways to package proposals which will substitute national service dollars for local dollars presently being spent to hire new teachers, policemen, nurses, etc.

The argument for no limit (or a higher limit) is that in many instances, communities can gain most, and young people give most, through service in a professional position, such as teaching. While the Police Corps proposal is proceeding, there is no plan to fund Teacher Corps at present, and a higher wage limit would allow for the option of keeping "professional corps" under the national service umbrella.

?

Jackhow —
from
John Seal at
ACTION 4/27

PERSONNEL FACT SHEET

The President's submission of the National Service Trust Act is imminent. This Act will establish a Corporation for National Service. Programs and employees of both the Commission on National and Community Service and ACTION will be combined in the new Corporation.

The following personnel features are included in the proposal:

- The Corporation will establish a merit-based competitive selection system based on job requirements and applicant qualifications. Except for special circumstances, the personnel of the Corporation may be appointed for terms that do not exceed 5 years, with renewals extending up to 7 years. Employees will be covered by civil service health and life insurance programs.

- During a transitional period not to exceed 18 months after the President's proposal is enacted, the Corporation and OMB will organize an orderly transfer of functions from ACTION to the Corporation.

- To the extent that ACTION personnel accept employment at the Corporation <u>prior</u> to the transfer of function, such employment will be under the Corporation's personnel system.

- Personnel who are transferred when a function is transferred will retain their rights under the competitive civil service system. At the point that these transferred personnel leave the Corporation, their positions will be filled under the Corporation's personnel system.

- The transfer of function will be implemented under the regulations contained in the Federal Personnel Manual, Chapter 351, Subchapter 10 (Transfer of Function).

- If an ACTION or Commission employee does not transfer to the Corporation, outplacement assistance will be provided to find a position in another Federal agency.

TESTIMONY OF MALCOLM F. COLES

ACTION STATE PROGRAM DIRECTOR FOR MASSACHUSETTS

Hearing on the Authorization of the National Service Trust Act
H.R. 2010
House Select Education and Civil Rights Subcommittee
Education and Labor Committee
May 25, 1993

INTRODUCTION:

Good Morning, Mr. Chairman, Members of the Committee, I sincerely appreciate your invitation to offer testimony on the proposed National Service Trust Act and, in particular, its potential impact upon the State Offices of the ACTION Agency.

By way of background, I would like to mention that my own personal experience with national service stems from the period of 1967-1969 during which time I was assigned as a VISTA Volunteer through the sponsorship of the White Mountain Apache Tribe in Cibecue, Arizona. Subsequently, I was on staff at the Office of Economic Opportunity and since its inception in July, 1971 I have worked for the ACTION Agency in several capacities in a span that covers the Administrations of six different Presidents.

ROLE AND FUNCTION OF ACTION STATE OFFICES:

My remarks today are focused upon the role and function of the 47 ACTION State Offices that currently serve as the primary point of contact for the over 2,000 community-based organizations and agencies across the country that sponsor ACTION's array of authorized programs.

From an historical standpoint, it is important to note that as the result of two decades of experience, ACTION State Offices have evolved into the management level that most effectively and efficiently can support the efforts of the our vast network of sponsorships through which 500,000 individual Americans provide essential services that meet community needs.

In addition to ensuring legislative and regulatory compliance, thereby safeguarding the resources of the federal government, the decentralized State Office field structure performs several critical functions designed to enhance the effectiveness of local volunteer/community service programs.

Towards that end, the fundamental operating approach of the ACTION State Offices is to assist local organizations and agencies in a "bottom up" planning and program development process that concentrates upon local decision making. Through assistance provided by State Office staff, the resources available through ACTION are applied to meet the particular needs of individual communities.

For example, Nueva Esperansa, a community development corporation in Holyoke, Massachusetts has designed a VISTA project that promotes affordable home ownership through a land trust and limited equity co-operatives. Simultaneously, the Office of Community Service at the University of Massachusetts at Lowell has developed a consortium style VISTA sponsorship that places VISTA Volunteers in community based organizations that address a multitude of issues including substance abuse prevention, domestic violence, literacy and affordable housing. In each of these instances, and in thousands of others nationwide, ACTION staff has provided the skill, knowledge and experience to assist local groups in crafting projects that are highly responsive to their needs.

Perhaps the most unique characteristic of ACTION's capacity is its ability to funnel resources directly to grass roots organizations. The documented successes of VISTA projects such as the Drop-a-Dime neighborhood crime prevention program in the Roxbury/North Dorchester neighborhoods of Boston and the award winning teen peer education initiatives of Reaching Out to Chelsea Adolescents are instances where the ACTION State Office staff have used their know-how to help grass roots organizations utilize the flexibility of the VISTA resource to solve locally determined problems.

Also included as core functions of ACTION State Offices are the following:

- Design and delivery of training for ACTION project directors, fiscal staffs, advisory boards and volunteers.

This is a multifaceted responsibility that encompasses pre service orientation and in service skill training for VISTA Volunteers; orientation for new project directors of Older American Programs and annual workshops designed to further the organizational development goals of our sponsors.

- On-site monitoring services and expertise designed to promote project effectiveness through problem solving strategies. The critically important area of enhancing the programmatic quality of local ACTION sponsored projects, cannot be overemphasized. The uniquely direct relationship between ACTION State staff and local sponsors provides the opportunity to tailor suggestions and map thoughtful solutions appropriate for each project.

- Recognition, acknowledgement and public awareness of the contributions of ACTION funded volunteers. In concert with local media contacts, ACTION State staff are able to showcase the valuable roles played by its volunteers in responding to community problems.

- Leveraging non-Federal resources to augment successful ACTION project activities. Throughout the country, ACTION State staff have provided the vital leadership that has resulted in the significant expansion of our sponsors' community service through the commitment of state and local government funds as well as impressive levels of private sector contributions.

Additionally, beyond the scope of our interaction with individual sponsoring organizations, ACTION State Offices provide technical assistance to the wider universe of local organizations that are interested in replicating the best of the programming models that we have to offer them.

From a cost effectiveness standpoint, it is significant to underline the fact that the aforementioned work is accomplished in our 47 individual State Offices with a total of fewer than 180 ACTION employees, many of whom are former VISTA Volunteers and returned Peace Corps Volunteers.

IMPACT OF PROPOSED LEGISLATION:

In your consideration of the Administration's proposed National Service Trust Act, I would first like to add my support to the overall thrust of the legislation. It is indeed both personally and professionally gratifying to bear witness to the elevation of national service to such status. Moreover, as was the case when the Commission on National and Community Service was created in 1990, ACTION State staff take particular pride in knowing that so many of the national service initiatives contained in the bill had their philosophical and programmatic origins in such ACTION models as VISTA, Program for Local Service, University Year for ACTION and other ACTION Service Learning Programs.

Overall, the merging of the Commission and ACTION into the Corporation of National Service makes eminent sense. The proposed management structure that would place current ACTION programs into the Federal Programs("Operating") Division while incorporating Commission programs through the Investment Division will create an apparatus that will unify the federal government's commitment to national service under one roof. Such consolidation addresses the long overdue need to ensure coordination and optimum operational efficiency while respecting the unique needs and characteristics of both ACTION's programs and those of the Commission.

I am pleased to note that Joe Madison, Co-Chairman of the Massachusetts Community Service Commission is also here today to offer testimony on H.R.2010. Joe is Executive Director of the Massachusetts Youth Service Alliance and prior to the establishment of the Massachusetts Commission, he and I were able to collaborate on the implementation of a highly successful ACTION funded Student Community Service project sponsored by the Thomas Jefferson Forum. The project promotes community service by Boston area high school students and has since been expanded through private foundation funds and institutionalized at the Lincoln Filene Center at Tufts University.

Since the establishment of the Massachusetts Commission, we have been able to combine our efforts on several other fronts, and currently we are working together to ensure that the two Boston based and Commission funded "Summer of Service" demonstration projects to be operated by City Year and the Lincoln Filene Center are well coordinated programmatically with the VISTA Summer Associates project that will address family literacy efforts in Boston's low income neighborhoods.

This "Massachusetts Model" of Commission and ACTION activities is but one example of many such collaborations involving ACTION State Offices and State Commissions/Lead Agencies nationwide. From Washington State to Washington D.C., other successful partnerships have flourished. H.R. 2010 would formally consolidate this symbiotic field structure.

The importance of one particular organizational feature needs to be underscored. Specifically, it is critical that Corporation presence be included on all State Commissions. Furthermore, the respective Corporation State Office Directors should be designated for these voting positions. As individual State Commissions are developed and expand, Corporation staff presence will ensure that the vast assets of ACTION's current programs are both protected and integrated into the design of state strategy plans for service and resource allocation. As well, a Corporation liaison on each State Commission will help to provide a guarantee that all organizations across the community service spectrum will be ensured equal opportunity to access the resources of a Commission and also will provide continuity and balance when the membership of individual State Commissions may change over time.

In closing, I would like to again emphasize that the organizational capacity, collective experience and proven track record of ACTION State Offices well positions them both to build upon their considerable successes as the primary federal resource for expansion of proven models of national service and to nurture new initiatives as well.

Thank you for the opportunity to appear before you today. I would be pleased to respond to any questions you may have at this time.

Jack,
Here is some info from LaRuine that you should take a look at.
SHW

May 25, 1993

To: Catherine Milton
Dick Staufenberger
Terry Russell
Melinda Hudson

From: Frank Spector

Here is a write-up of today's hearing. I am deliberately beginning this write-up with Panel II due to the combination of the phone call that I received today and the make-up of the panelists on today's panels.

To recap, this morning at around 8:30 am I received a telephone call from Jerry Gallun of ACTION. He asked several questions including:

- Whether CNCS employees were civil service or temporary;
- If there was a CNCS organizational chart that I could send him;
- If there was a CNCS telephone directory with everyone's telephone number and job title;
- He asked me if I was interested in ACTION;
- He asked me if I was following the legislation;
- Finally, he asked me if I would be interested in an ACTION telephone directory.

During today's hearing, one of witness panelist was David Gurr, the representative of ACTION's Employees Union. I am enclosing a copy of his testimony for your review. Specifically, **ACTION is concerned that**:

- some unnamed ACTION functions will be transferred to the new Corporation;
- that ACTION employees are only guaranteed their job and pay for one year;
- a new personnel system is being established;
- employment in the corporation is limited to five years;
- the legislation offers "job counseling" to those employees who do not transfer;

and

- some of the functions of ACTION could be limited in the transfer.

The **recommendations of ACTION** are:

- All functions and employees of ACTION should be transferred to the new corporation;
- All employees of the corporation should be covered by Civil Service Protections;
- No maximum period of employment for employees;
- All transferred ACTION employees should retain their competitive civil service status;
- Action should be made part of the corporation from its inception.

The other witnesses on panel II, Malcolm Coles and Joe Madison both praised the state networking system that ACTION currently has in place and were very much pro-ACTION:

Here are the questions:

Chairman Owens: How many ACTION employees and the average time of service?

Gurr: 420 ACTION employees with an average length of service of 15 years.

Owens: Has the Union been involved with the formation process of the corporation?

Gurr: No, Segal spoke to the Union once. The union has spoken Jack Lew. The Union wants to get clarity of its responsibility in the new corporation.

Owens: If no civil service status were conferred to ACTION employees, what will the impact be on ACTION employees?

Gurr: Many of them would have likely lost their jobs during the past 12 years.

Coles: Presence of civil service has saved jobs.

Madison: there are 100 VISTA slots in Mass.

Owens: What is the Administrative function be of state offices?

Coles: ACTION does have serious oversight responsibilities currently.

Madison: Need to monitor both the program and how the money is spent.

Owens: How does the allocation of funds in ACTION compare to CETA?

Madison: Oversight function of the state commission should preclude the same mistakes that occurred in CETA. The corporation's set-up is desirable. There is a quality match because the programs are not fully federally funded. Additional applications must be part of the state plan. Will expand and mobilize citizens of all agencies.

Owens: What is the cost of SoS per participant?

Madison: $5000

Coles: VISTA summer program costs $2000 per participant

Petri: Has ONS given rationale for eliminating ACTION employee protection after one year? Do the ACTION employees want to remain protected?

Gurr: Yes, ACTION employees want job protection. They are very concerned about job security.

Petri: Willing to work with ACTION to come up with reasonable protections for ACTION employees.

Martinez: Assume that the corporation removes ACTION employees from civil service protection. Want to change this. Do not want to lose the experience of ACTION employees.

ACTION EMPLOYEES UNION
AFSCME LOCAL 2027

TESTIMONY OF DAVID R. GURR

PRESIDENT OF THE ACTION EMPLOYEES UNION,
AFSCME LOCAL 2027

BEFORE THE JOINT HOUSE SUBCOMMITTEES ON

SELECT EDUCATION AND CIVIL RIGHTS

&

HUMAN RESOURCES

on

THE NATIONAL SERVICE TRUST ACT OF 1993, H.R. 2010

May 25, 1993

1100 Vermont Ave., N.W., Room 11001
Washington, D.C. 20525

I am David Gurr. I am president of the Union that represents employees of the ACTION Agency, AFSCME Local 2027, an affiliate of the American Federation of State, County, and Municipal Employees.

ACTION employees enthusiastically support the programs proposed by the National Service Act. For two decades ACTION employees have witnessed and been instrumental in the implementation of successful volunteer-based community service programs. These programs have met a wide range of human, educational, environmental, and public safety needs.

While ACTION employees are excited about the revitalized prospects for national community service, they are greatly concerned that there are technical aspects of the legislation which undermine civil service and could harm the Corporation for National Service as well. Specifically, the legislation:

- allows some unnamed ACTION functions to be transferred to the new Corporation;

- has very limited guarantees for those employees who may be transferred (e.g. they may keep their jobs and pay for one year);

- authorizes the establishment of a new personnel system for the Corporation that is outside important provisions of the current Title 5 Civil Service regulations;

- limits employment in the Corporation to five years with possible extensions in certain circumstances;

- offers "job counseling" to those who do not transfer; and

- could limit the transfer of functions from ACTION since the new Corporation will have up to 18 months to hire outside employees to perform those functions.

The new Corporation is to be run like a streamlined enterprise, with enthusiasm, fresh ideas, and quick decisions. Its "flexible personnel policy" is being touted. It is to run like a private corporation. However, what successful corporation in the private sector--young or old, large or small--has a policy that limits employment to five years? How can the Corporation effectively maintain effective personnel, computer, grants and contracts, and legal services when you let experienced employees go after five years?

A philosophy behind the establishment of the Corporation is that it would not be able to efficiently do its job within the confines and structure of the federal civil service system. So the proposition is to select certain jobs that will go to the

Corporation, provide job counseling to employees who don't go, set up a new personnel system, hire new people, and run an organization that will do what ACTION and the national Commission are currently doing. This does not make sense programmatically, fiscally, or from a human resource perspective.

The civil service system was established in the late 19th century to stop politicization, favoritism, and the spoils system. The federal civil service contains methods for competitive hiring, rewarding exemplary performance, and providing security, continuity, and constancy at key levels of government--through a system that is as free of political influence as possible. Are we going to create a system that unintentionally takes us a step back in time?

ACTION's programs are widely acknowledged to be extremely successful, and this is due in no small part to the stewardship, skills, and expert knowledge of volunteerism of ACTION's employees. Many ACTION employees are former VISTA and Peace Corps Volunteers and staff and bring a personal understanding of and commitment to volunteerism. For years we have had experience supporting ACTION's programs and a wide variety of national and successful local volunteer projects. Because of this experience, we believe that every ACTION employee should be transferred to the Corporation. There would be no disruption of programming or continuity if all staff were brought into the new Corporation. ACTION employees have demonstrated that they can effectively and efficiently manage national and local service programs.

If all ACTION employees are transferred and given assignments that would use their experience and ability, the Corporation would gain program continuity, staff experience, regional and state expertise, and a foundation that would help achieve success. ACTION employees know that quality program management will allow the Corporation to succeed and make a significant impact on this Nation through expanded opportunities for national service.

As you know, service learning is one of the programs proposed in the legislation. You should be aware that service learning was developed by ACTION's National Center for Service Learning in the late-70's. This program put into practice a classic and successful model of public-private synergy. Similarly, ACTION was the creator of numerous national service models including the Program for Local Service. Since its inception, ACTION programs have continued to develop models for national service and these models can be replicated under the new Corporation if the knowledge and experience of ACTION employees is tapped.

ACTION employees can provide expertise and support for the various programs under the new Corporation, as well--developing projects, training project staff and volunteers, supporting local collaborations with the public and private sector, fiscal and program monitoring, program evaluation, recruiting volunteers, and encouragement and recognition.

ACTION employees possess the knowledge and experience in working with local and state-wide volunteer organizations, local government, businesses, educational institutions and any other organization that could collaborate to achieve projects. In fact, they have been acknowledged by local and state-wide volunteer organizations for skill, sensitivity, and accessibility.

ACTION staff want the National Service Trust Corporation to be successful. They believe that the Act can be strengthened with some technical changes to the legislation. These changes will help employees and will enhance the programs under the new Corporation. The changes are:

- All functions currently performed by ACTION and all employees associated with those functions should be transferred since they will be required by the Corporation.

- All employees of the Corporation should be covered by the Civil Service Provisions of Title V, United States Code in its entirety.

- There should be no maximum period of employment for employees.

- All ACTION employees who are transferred to the corporation should retain their competitive civil service status even if they are offered and accept a new position in the corporation.

- ACTION should be a part of the Corporation for National Service from the date of its inception.

To summarize, the ideals of national service are those that ACTION employees have believed in and worked on for decades. It was best stated by Senator Wofford during the full Senate Committee hearings two weeks ago. He said that "Those who give public service every day in their careers would be ill served if they are not involved in implementing national service." National Service is what ACTION employees have hoped for and wished to be a part of for a long, long time.

Interests of employees; protective arrangements; terms and conditions

(c) It shall be a condition of any assistance under this chapter that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2) (f) of this title. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements. Pub.L. 88–365, § 13, formerly § 10, July 9, 1964, 78 Stat. 307, renumbered and amended Pub.L. 89–562, § 2(a) (1), (b) (2), Sept. 8, 1966, 80 Stat. 715, 716; Pub.L. 90–19, § 20 (a), May 25, 1967, 81 Stat. 25.

Library references: Labor Relations 🔑1083; States 🔑4.19; United States 🔑52; C.J.S. Master and Servant § 153; C.J.S. States §§ 1, 7; C.J.S. United States § 122.

References in Text. The Davis-Bacon Act, as amended, referred to in subsec. (a), is classified to sections 276a to 276a—5 of Title 40, Public Buildings, Property and Works.

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (b), is set out in the Appendix to Title 5, Government Organization and Employees.

1967 Amendment. Subsec. (a). Pub.L. 90–19 substituted "Secretary" for "Administrator" wherever appearing.

1966 Amendment. Subsec. (c). Pub.L. 89–562 substituted "under section 1602 of this title" for "under this chapter".

Legislative History. For legislative history and purpose of Pub.L. 89–562, see 1966 U.S.Code Cong. and Adm.News, p. 2698. See, also, Pub.L. 90–19, 1967 U.S. Code Cong. and Adm.News, p. 1194.

Index to Notes

1. Hearing

Railroad employees who alleged that fair and equitable arrangements had not been made to protect them with respect to proposed federal grants-in-aid to state and state agencies for purposes of improving railroad commuter service were not entitled to hearing before Secretary of Labor on their objections to proposed protective provisions. Kendler v. Wirtz, C.A.N.J.1968, 388 F.2d 381.

2. Review

It was not appropriate for the Court of Appeals to substitute its judgment for Secretary of Labor's judgment that railroad employees were afforded fair and equitable protection from any adverse effects to them of proposed federal grants-in-aid to state and state agencies for purpose of improving railroad commuter service. Kendler v. Wirtz, C.A.N.J.1968, 388 F.2d 381.

3. Employment relationship

Where management agreement, which related to operation of transit system, required managing corporation to furnish only management personnel necessary for operation of facility by public benefit subsidiary of regional transportation authority, excluded corporation from active management and direction of labor relations, and provided for indemnification of corporation against claims resulting from negligent act on part of employee of subsidiary, transit system employees, for purposes of application of public employees' fair employment act to strike, were public employees of subsidiary rather than private employees of corporation. Regional Transit Service, Rochester-Genesee Regional Transp. Dist., Inc. v. Local Division 282 of Amalgamated Transit Union, AFL–CIO, 1970, 318 N.Y.S.2d 325, 64 Misc.2d 865.

§ 1610. Environmental protection

(a) It is hereby declared to be the national policy that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets, in the planning, designing, and construction of urban mass transportation projects for which Federal assistance is provided pursuant to section 1602 of this title. In implementing this policy the Secretary shall cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior, and with the Council on Environmental Quality with

regard to each project that ma
vironment.

(b) The Secretary shall revi
pursuant to section 1602(d) c
opportunity was afforded for the
a significant economic, social,
project application includes a de

(1) the environmental im

(2) any adverse environ
should the proposal be imple

(3) alternatives to the pr

(4) any irreversible and
which may be involved in t
mented.

(c) The Secretary shall not
under section 1602 of this title
and complete review of the appli
the State or local public agency p
that (1) adequate opportunity was
by all parties with a significant e
est, and fair consideration has b
hancement of the environment an
which the project is located, and
effect is likely to result from such
prudent alternative to such effec
taken to minimize such effect. In
been held before the State or loca
of this title, or in which the Sec
hearings before the State or local
him to make the findings required
conduct hearings, after giving ade
any environmental issues raised b
Secretary under this subsection sha
Pub.L. 88–365, § 14, formerly § 1
bered Pub.L. 89–562, § 2(a) (1),
Pub.L. 90–19, § 20(a), May 25, 19
Oct. 15, 1970, 84 Stat. 966.

Library references: Municipal Corporati
ed States 🔑52; C.J.S. Municipal Corpora
§§ 1, 7; C.J.S. United States § 122.

1970 Amendment. Pub.L. 91–453 broadened the existing air pollution control requirement that in planning, designing, and constructing mass transportation projects financed under this chapter, special effort be made to preserve the natural beauty of the physical environment and important historical and cultural assets, and required the Secretary, in carrying out this policy, to cooperate and consult with the Secretaries of Agriculture, Health, Education and Welfare, Housing and Urban Development, and Interior and with the Council on Environmental Quality, with regard to each project that may have a substantial impact on the environment, and to provide a fair opportunity for the presentation of views on the impact of the proposed project on the environment, and to make a finding that no adverse environmental effect is likely to result from the project, or that there is no feasible and prudent alternative to it.

1967 Amendment. Pub.L. 90–19 substituted "Secretary" for "Administrator".

Transfer of Functions. Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of ity. In re Penn Cent. Transp. Co., C.A.Pa.1971, 446 F.2d 1109.

4. Administrative discretion

Secretary of Labor did not abuse his discretion in certifying that fair and equitable arrangements had been made to protect employees affected by discontinuance of intercity rail passenger service by railroads signing contracts with Corporation (Amtrak). Congress of Railway Unions v. Hodgson, D.C.D.C.1971, 326 F.Supp. 68.

5. Injunctions

Unions were not entitled to preliminary injunctive relief against certification by Secretary that fair and equitable arrangements had been made to protect employees affected by discontinuance of intercity rail passenger service by railroads signing contracts with Corporation (Amtrak), where unions had not made a strong showing that they were likely to prevail on the merits, their claim of irreparable injury could not be sustained, and statutory plan would be seriously jeopardized if court were to declare invalid the contracts which had been entered into between the Corporation and the railroads. Congress of Railway Unions v. Hodgson, D.C.D.C.1971, 326 F. Supp. 68.

§ 565. Protective arrangements for employees—Duty of railroads; discontinuance of intercity rail passenger service

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 545 and 562 of this title pursuant to any modification or termination thereof or an assumption of operations by the Corporation.

Substantive requirements for protection

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2) (f) of Title 49. Any contract entered into pursuant to the provisions of this subchapter shall specify the terms and conditions of such protective arrangements. No contract under section 561(a) (1) of this title between a railroad and the Corporation may be made unless the Secretary of Labor has certified to the Corporation that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

Commencement of protection

(c) Upon commencement of operations in the basic system, the substantive requirements of subsections (a) and (b) of this section shall apply to the Corporation and its employees in order to insure the maintenance of the protective arrangements specified in such subsections, except that nothing in this subsection shall be construed to impose upon the Corporation any obligation of a railroad with respect to any right, privilege, or benefit earned by any employee as a result of prior service performed for such railroad. The Secretary of Labor shall certify that affected employees of the Corporation have been provided fair and equitable protection as required by this section within one hundred and eighty days after assumption of operations by the Corporation.

Obligations of contractors; minimum wages; labor, health, and safety standards

(d) The Corporation shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed with the assistance of funds received under any contract or agreement entered into under this subchapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corporation shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 333 of Title 40 shall be applicable to all construction work performed under such contracts or agreements, except any construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

Contracts not to result in layoff

(e) The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service on October 30, 1970, and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

Free or reduced-rate transportation for railroad employees; single systemwide schedule of terms and compensation; reimbursement of Corporation by railroads; agreements for expenses; decision of Commission respecting payments issue; reimbursement of railroads not under contract with Corporation for acceptance of schedule specified in agreements; "railroad employee" defined

f) The Corporation shall take such action as may be necessary to re that, to the maximum extent practicable, any railroad em- e eligible to receive free or reduced-rate transportation by rail-

road on April 30, 1971, under the terms in effect on such date will be eligible to receive, provided space is available, free or reduced-rate transportation on any intercity rail passenger service provided by the Corporation under this chapter, on terms similar to those available on such date to such railroad employee under such policy or agreement. However, the Corporation may apply to all railroad employees eligible to receive free or reduced-rate transportation under such policies or agreements, a single systemwide schedule of terms determined by the Corporation to reflect terms applicable to the majority of such employees under those policies or agreements in effect on April 30, 1971. The Corporation shall be reimbursed by the railroads by way of payment or offset for such costs as may be incurred in providing transportation services to railroad employees under any policy or agreement referred to in the first sentence of this subsection, including the costs of implementing and administering this section. Within ninety days after the enactment of this sentence, each railroad shall enter into an agreement with the Corporation for the payment of such expenses. If the Corporation and a railroad are unable to agree as to the amount of any payment owed by the railroad under this subsection, the matter shall be referred to the Commission for decision. The Commission, upon investigation, shall decide the issue within ninety days following the date of referral, and its decision shall be binding on both parties. If any railroad company which operates intercity passenger service not under contract with the Corporation notifies the Corporation and railroads which have entered into the agreement specified above that it will accept the terms of the systemwide schedule of terms and the compensation specified in the agreements, such railroad company shall be reimbursed for services to railroad employees in accordance with the agreements. As used in this subsection, the term "railroad employee" means (1) an active full-time employee, including any such employee during a period of furlough or while on leave of absence, of a railroad or terminal company, (2) a retired employee of a railroad or terminal company, and (3) the dependents of any employee referred to in clause (1) or (2) of this sentence.

Pub.L. 91–518, Title IV, § 405, Oct. 30, 1970, 84 Stat. 1337; Pub.L. 92–316, §§ 7, 8, June 22, 1972, 86 Stat. 230.

Historical Note

References in Text. Davis Bacon Act, referred to in subsec. (d), is classified to section 276a et seq. of Title 40, Public Buildings, Property, and Works.

Railway Labor Act, referred to in subsec. (d), is Act May 20, 1926, ch. 347, 44 Stat. 577, which is classified to section 151 et seq. of this title.

Enactment of this sentence, referred to in subsec. (f), means June 22, 1972, date of approval of Pub.L. 92-316.

1972 Amendment. Subsec. (a). Pub.L. 92-316, § 7(a), provided for protection of interests of employees of terminal companies and defined term "discontinuance of intercity rail passenger service".

Subsec. (b). Pub.L. 92-316, § 7(b), required certification of fair and equitable protection by railroad to affected terminal employees in the labor protective provisions of contract between railroad and the Corporation.

Subsec. (c). Pub.L. 92-316, § 7(c), substituted introductory "Upon" for "After", included reference to subsec. (a), provided for application of substantive

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

§ 1005. Applicability of laws relating to Federal employees

(a)(1) Except as otherwise provided in this subsection, the provisions of chapter 75 of title 5 shall apply to officers and employees of the Postal Service except to the extent of any inconsistency with—

(A) the provisions of any collective-bargaining agreement negotiated on behalf of and applicable to them; or

(B) procedures established by the Postal Service and approved by the Civil Service Commission.

(2) The provisions of title 5 relating to a preference eligible (as that term is defined under section 2108(3) of such title) shall apply to an applicant for appointment and any officer or employee of the Postal Service in the same manner and under the same conditions as if the applicant, officer, or employee were subject to the competitive service under such title. The provisions of this paragraph shall not be modified by any program developed under section 1004 of this title or any collective-bargaining agreement entered into under chapter 12 of this title.

(3) The provisions of this subsection shall not apply to those individuals appointed under sections 202, 204, and 1001(c) of this title.

(b) Section 5941 of title 5 shall apply to the Postal Service. For purposes of such section, the pay of officers and employees of the Postal Service shall be considered to be fixed by statute, and the basic pay of an employee shall be the pay (but not any allowance or benefit) of that officer or employee established in accordance with the provisions of this title.

(c) Officers and employees of the Postal Service shall be covered by subchapter I of chapter 81 of title 5, relating to compensation for work injuries.

(d) Officers and employees of the Postal Service (other than the Governors) shall be covered by chapter 83 of title 5 relating to civil service retirement. The Postal Service shall withhold from pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in such chapter. The Postal Service, upon request of the Civil Service Commission, but not less frequently than annually, shall pay to the Civil Service Commission the costs reasonably related to the administration of Fund activities for officers and employees of the Postal Service.

(e) Sick and annual leave, and compensatory time of officers and employees of the Postal Service, whether accrued prior to or after commencement of operations of the Postal Service, shall be obligations of the Postal Service under the provisions of this chapter.

(f) Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the former Post Office Department or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Postal Service, until changed by the Postal Service in accordance with this chapter and chapter 12 of this title. Subject to the provisions of this chapter and chapter 12 of this title, the provisions of subchaper I of chapter 85 and chapters 87 and 89 of title 5 shall apply to officers and employees of the Postal Service, unless varied, added to, or substituted for, under this subsection. No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees than fringe benefits in effect on the effective date of this section, and as to officers and employees for whom there is a collective-bargaining representative, no such variation, addition, or substitution shall be made except

by agreement between the collective-bargaining representative and the Postal Service.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 731.

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

1. Overtime pay

Annual rate postal employees whose work schedules, are disrupted are entitled to premium pay for any regularly scheduled off days they are required to work. United Federation of Postal Clerks, AFL-CIO v. Watson, 1969, 409 F.2d 462, 133 U.S.App.D.C. 176, certiorari denied 90 S.Ct. 212, 396 U.S. 902, 24 L.Ed.2d 178.

Annual rate regular employee who had in accordance with provisions of former section 3571 et seq. of this title, been scheduled to work a Monday-to-Friday work week and who on Thursday had been told that because of temporary personnel shortage he would work following Saturday and Sunday and rest following Monday and Friday was entitled to overtime pay for Saturday and Sunday work. Id.

§ 1006. Right of transfer

Officers and employees in the postal career service of the Postal Service shall be eligible for promotion or transfer to any other position in the Postal Service or the executive branch of the Government of the United States for which they are qualified. The authority given by this section shall be used to provide a maximum degree of career promotion opportunities for officers and employees and to insure continued improvement of postal services.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 732.

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

1. Discriminatory practices

Evidence sustained Commission's finding that postal employee had not been discriminated against and was not discriminated against by proposed transfer from regional office to general headquarters in Washington. Burton v. U. S., 1968, 404 F.2d 365, 186 Ct.Cl. 172, certiorari denied 89 S.Ct. 1599, 394 U.S. 1002, 24 L.Ed.2d 780.

Evidence sustained board's finding that "lack of rapport" between regional postal employee and his superiors was due to actions on employee's part and was not due to discrimination. Id.

§ 1007. Seniority for employees in rural service

Subject to agreements made under chapter 12 of this title, the seniority of an employee of the Postal Service occupying a position whose regular duty involves the collection and delivery of mail on a rural route shall be preserved. Seniority for such employee shall commence on the first day of his service in such a position, or, in the event such an employee transfers to another such position, on the day he enters duty in the other position. Upon initial assignment, such an employee shall be assigned to the least desirable route and shall attain assignment to more desirable routes by seniority. Promotions and assignments for such an employee in such position shall be based on seniority and ability. If ability be sufficient, seniority shall govern.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 732.

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

§ 1008. Temporary employees or carriers

(a) A person temporarily employed to deliver mail is deemed an employee of the Postal Service and is subject to the provisions of chapter 83 of title 18 to the same extent as other employees of the Postal Service.

(b) Any person, when engaged in carrying mail under contract with the Postal Service, or employed by the Postal Service, is deemed a carrier

MEMO

TO: **Jack**
FR: **Robert**
DA: **May 12**
RE: **Transfer Provisions**

Nanine and company sent us the texts of the two bills. I read them, as best I could. The gist is that anyone who transfers retains their old pay level, rights and benefits. In the Freedman's Hospital (Howard) statute, it is clear that the only way not to transfer someone is to abolish his or her position, with 6 months notice. In the Panama Canal Act, in addition to the elimination of positions, there's reference to an employee "who separates or is scheduled to separate... for any reason other than misconduct or delinquency." I'm unclear who would determine such separation and on what grounds.

In both cases, placement assistance is provided to employees not transferred.

Texts follow, with efforts to underline.

THE FEDERAL DOMESTIC VOLUNTEER AGENCY
ACTION
U.S.A

OFFICE OF THE DIRECTOR

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

April 30, 1993

MEMORANDUM

TO: ACTION Headquarters Employees

FROM: John Seal John Seal
Acting Director

SUBJECT: National Service Trust Act of 1993

This afternoon President Clinton is announcing his intention to submit the "National Service Trust Act of 1993" to the Congress for their action. The Act will, among other things, create a Corporation for National Service that builds upon and includes the programs and employees of ACTION and the Commission on National and Community Service.

ACTION employees as well as people who are affected by our programs are, of course, particularly interested in understanding the legislation. To help in that regard, I have attached a White House Fact Sheet which explains the President's concept of national service, including the educational benefits contemplated; how the proposal affects VISTA and Older American Volunteer Programs; and how the Corporation would work. A second Fact Sheet describes personnel impacts, although in the very general way that is necessary until more details are made available.

from Apr. 30

Be assured that you will be kept advised as information becomes available.

PERSONNEL FACT SHEET

The President's submission of the National Service Trust Act is imminent. This Act will establish a Corporation for National Service. Programs and employees of both the Commission on National and Community Service and ACTION will be combined in the new Corporation.

The following personnel features are included in the proposal:

- The Corporation will establish a merit-based competitive selection system based on job requirements and applicant qualifications. Except for special circumstances, the personnel of the Corporation may be appointed for terms that do not exceed 5 years, with renewals extending up to 7 years. Employees will be covered by civil service health and life insurance programs.

- During a transitional period not to exceed 18 months after the President's proposal is enacted, the Corporation and OMB will organize an orderly transfer of functions from ACTION to the Corporation.

- The only organizational structure defined in the proposal is the establishment of a Corporation with a Board of Directors and two corporate divisions: one for Federal operating programs (VISTA and OAVP) and another for Federal investment programs (the new national service initiatives). Decisions on further organizational structures in Headquarters and the Field will be left to the Corporation's leadership.

- To the extent that ACTION personnel accept employment at the Corporation <u>prior</u> to the transfer of function, such employment will be under the Corporation's personnel system.

- ACTION personnel who are transferred when a function is transferred will retain their rights under the competitive civil service system and not be subject to the 5 year term provision. At the point that these transferred personnel leave the Corporation, their positions will be filled under the Corporation's personnel system.

- The transfer of function will be implemented under the regulations contained in the Federal Personnel Manual, Chapter 351, Subchapter 10 (Transfer of Function).

- If an ACTION or Commission employee does not transfer to the Corporation, outplacement assistance will be provided to find a position in another Federal agency.

— ACTION, 4/30/93

NOTES DISTRIBUTED BY THE UNION AT NOON MTG. WITH ACTION UNION EMPLOYEES 5/14/93.

Meeting with Jack Lew, the General Counsel of the Office of National Service who,with Shirley Sagawa, authored the National Service Act:

Union: Will ACTION employees retain their civil service status? Will that status a) continue if they are transferred within the corporation as a result of a reorganization or realignment, or b) if they are promoted to another position?

A. They will be governed by the normal transfer of function rules. Somewhere in the legislation, it says that employees of ACTION will be transferred under Title V.
If transferred, you are grandfathered in, and can stay as long as the position is there.

Union: Why do bill summaries approved by the White House Office of National Service (ONS) --- state that employees transferred to the Corporation for National Service will retain their competitive civil service status, while the bill itself does not contain this language?

A. The bill and the summaries are written in English and it should be clear that what is contained in the summaries of intent are included in the bill's language.

Union: What funcitons will be transferred to the Corporation?

A. A "range of no-functions to all functions" will be transferred but it will be some place in the middle of this range.

Union: What if someone has 12 to 15 years of Federal service, what will happen to them?

tenure

A. We hope that if they want to work for the Corporation, they will be willing to give up their Federal retirement in order to accept a position with the Corporation if their function is not transferred. "There will be rewards in non-monetary ways."

Union: Why is there a five-year rule?

A. We wanted to try something that was new. We looked at the Peace Corps and liked the idea of having new people coming and going with new ideas. Also, we wanted to give people experience so that they can become employed in other Federal agencies. We are aware of the down-side of the five-year rule as it relates to core government functions.

Union: Why not have personnel systems that have both civil service and corporations employees.

A. We wanted to create "one culture," and tried to design a process that would achieve that goal.

Union: Why didn't you not just use the civil service system?

A. Because we must hire the most senior applicant for a position. You can make decisions faster.

We pointed out to Lew that the selection process for a position involves the certification of a group of best qualified candidates and the selection official is able to choose from among those candidates.

Union: What will happen to ACTION employees who are not transferred to the Corporation?

A. We believe that outplacement will work and we will be albe to avoid RIFs. But, this is difficult to structure as there can't be an obligation to find employment for all. We are open to suggestions on Early Outs.

Union: How will the Corporation insure the new personnel system is fair?

A. The Board of the Corporation will serve as a check on the employment system.

Union: The draft of the legislation said that there would be a five-year rule and that an employee could be extended to seven years, but this provision was dropped from the bill submitted to Congress. Why?

A. We did not notice that it was dropped in the final version of the bill. However, the "presumption of tunover with a presumption that it can be extended," is our intent.

Union: What happens next?

A. A task force will be established shortly (in a matter of weeks rather than months) to review the ACTION Agency and start the process of transition.

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Other comments made to the Union during the briefing by the GC of ONS:

o ONS has been told that 40% of the ACTION employees are within the range of retirement, presumably early retirement.

o ONS has noticed that grantees speak very highly of state office o ONS has noticed that grantees speak very highly of state office employees and they are known as being easily accessible..

o ONS feels that there will have to be "technical fixes" on the legislation.

o The ONS "people have been involved with policy issues at present and have to turn next to the phase which is organizational development."

What's next?

A time will be set up next week when a couple of the ONS staff will be able to the Union the differences between the summaries of the legislation and the bill itself. In essence, they will be able to point out where the provisions of the bill agree with the statements in the summaries.

THE FEDERAL DOMESTIC VOLUNTEER AGENCY
ACTION
U.S.A.

OFFICE OF THE DIRECTOR

1100 VERMONT AVENUE, NW
WASHINGTON, DC 20525

May 14, 1993

MEMORANDUM

TO: The Honorable Eli Segal
Assistant to the President

FROM: Gary Kowalczyk
Acting Director

SUBJECT: Planning for Implementation of National Trust Act

As Judy Harrington mentioned to you, ACTION has formed a National Service Planning Group to consider the process of moving the agency and related programs into the Corporation for National Service. The Planning Group will be supplemented by issue-specific working groups. Our intent is to constructively involve a broad spectrum of employees in this activity.

Attached for your information is a listing of perceptions that were surfaced during the Group's first meeting.

ACTION National Service Planning Group: Discussion Issues

PROGRAMS. It is critically important to keep the on-going programs functioning through the period of transition and to prepare for program changes and growth resulting from new legislation and structure.
- maintain integrity of existing programs
- maintain program service delivery during transition
- reassure existing sponsors
- establish innovation/demonstration/development capacity
- identify adjustments to meet requirements of new legislation
- plan to implement required program growth
- broad-based inventories of state programs

REINVENTION. The legislation envisions a new approach to the provision of service initiatives and volunteer program development and support.
- identify, review, and refine opportunities in current operations.
- rethink program/administrative approach--"entrepreneurial" focus
- organizational structure--flatten, push authority/ responsibility down
- key goal is to reduce burden on "clients"
- consideration of roles/relationships among Federal, State, and local organizations

CORPORATION START-UP. This should initially be an organizational development exercise to determine possible roles and actions to prepare for prompt start-up, following enactment.
- identify functions to be performed by staff of new organization
- develop organizational and staffing plan to accomplish functions
- assess capacities of partners--CNCS, ONS, ACTION
- match skills and capacities to organizational functions
- plan process for accomplishing start-up
- determination of Board members

PERSONNEL. Anxiety exists among ACTION staff about jobs; this will continue until Corporation start-up. To extent possible, concerns need to be identified and answered (even if not fully resolved until later date) to permit orderly planning for transfer of functions/personnel.
- open questions about job status
- transfer of functions/personnel
- union relationship
- timing
- conditions/rules/status following transfer
- consideration of employee anxiety in time of organizational change

FIELD STRUCTURE. ACTION's field structure (States and Regions) needs to be assessed in light of program delivery responsibilities and overall direction contained in new legislation.

- role of Regional offices
- role of State offices
- field relationships
- Role of State Commissions and relation of the Corporation's representative to ACTION State offices
- State-level assessments of what ACTION/CNCS/POLF, and other major players, do in each state

SUPPORT/ADMINISTRATIVE. Principal task will be to identify requirements resulting from new legislation and Corporation structure, extent to which the functions are already being carried out, and then to plan for transfer or establishment of necessary functions.

- needs under new legislation not currently performed (e.g., trust fund management)
- transfer of support operations (Counsel, accounting, procurement, personnel, admin., etc.)
- physical plant, equipment
- systems

REDUNDANCY. The implementation of the new Corporation must be seen as the opportunity to avoid overlap of both program activity and administrative operations between ACTION and CNCS.

- current program initiatives
- current administrative capacity
- related authorities in legislation (e.g., Inspector General)

COMMUNICATIONS. A variety of internal and external constituencies and information needs must be met. No interested party--inside or outside government--should be permitted to feel left out.

- identify constituencies
- identify information needs
- determine appropriate vehicles for communication
- two-way information and feedback
- congressional relations

ACTION PARTICIPANTS LIST

FRIDAY, MAY 14, 1993

GARY KOWALCZYK	-	ACTING DIRECTOR
TOM FLEMMING	-	ACTING EXECUTIVE OFFICER
JUDY HARRINGTON	-	WHITE HOUSE LIAISON
STEWART DAVIS	-	ACTING GENERAL COUNSEL
DAVID SPEVACEK	-	ACTING ASSOC. DIRECTOR, OMB
PHYLLIS BEAULIEU	-	DIRECTOR, PERSONNEL
ARTHUR LERNER	-	CHIEF, LABOR & EMPLOYEE RELATIONS BRANCH
JOSIE HEATH	-	SPECIAL ASSISTANT

48,000 → 14,800 19,000

9512

25 yrs service

50 yrs age

+ spouse

2% reduction
for years under 55

24,000 → 7,500 9,600

Anti poverty
Older Americans