

§ 1206.1-10 Modification of procedures by consent.

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

§ 1206.1-11 Other remedies.

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

Subpart B—Denial of Application for Refunding**§ 1206.2-1 Applicability of this subpart.**

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

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

§ 1206.2-2 Purpose.

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

§ 1206.2-3 Definitions.

As used in this subpart—Corporation", "CEO", and "recipient" are defined in accordance with § 1206.1-3.

Financial assistance and *assistance* include the services of National Senior Service Corps volunteers and

AmeriCorps*VISTA members supported in whole or in part with Corporation funds provided under the DVSA.

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

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

§ 1206.2-4 Procedures.

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

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

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this

§ 1206.2-5

45 CFR Ch. XII (10-1-05 Edition)

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

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

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Corporation, while mindful of considerations of the recipient, will take care to insure

that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Service Center or Corporation State Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by the Corporation, after weighing the convenience factors of the recipient. For the convenience of the recipient, the Corporation will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

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

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

§ 1206.2-5 Right to counsel.

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