

office. If the situation is not resolved at the end of the 15 day period, the Volunteer will be removed from the project and placed on Administrative Hold, pending a decision as set forth in paragraph (c) of this section.

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

(1) Accept the Volunteer's resignation;

(2) If removal was requested for reasons other than those listed in §1210.3-1, ACTION will attempt to place the Volunteer on another project. If reassignment is not possible, the Volunteer will be terminated for lack of suitable assignment, and he or she will be given special consideration for reinstatement; or

(3) If removal from the project is approved based on any of the grounds for early termination as set forth in §1210.3-1, the Volunteer may appeal the termination grounds as detailed in subpart C of this part to establish whether such termination is supported by sufficient evidence. If ACTION determines that the removal based on grounds detailed in §1210.3-1 is not established by adequate evidence, then the procedures outlined in §1210.3-2(c)(2) will be followed.

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

#### § 1210.3-3 Suspension.

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

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

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

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

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

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

(c) *Review and Notice of Decision.* (1) Within 5 working days after the date of

## § 1210.3-5

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

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

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

(d) *Allowances and Project Activities.*

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

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

### § 1210.3-5 Preparation for appeal.

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

(b) *Time for Preparation and Presentation.* (1) A Volunteer's representative, if a Volunteer or an employee of ACTION, must be given a reasonable

## 45 CFR Ch. XII (10-1-06 Edition)

amount of time off from assignment to present the appeal.

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

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

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

### § 1210.3-6 Appeal of termination.

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

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