

for the decision and of the volunteer's right to appeal.

(f) *Time Limit.* If a volunteer is dissatisfied with the decision of the Regional Director or designee on the merits of the grievance, he or she shall notify the Regional Director within five (5) calendar days from receipt of the decision and request the appointment of an Examiner. If the volunteer receives no response from the Regional Director or Office of General Counsel as required by paragraphs (d) and (e) of this section within five (5) calendar days after the prescribed time limits, the volunteer may request in writing that the Regional Director appoint a Grievance Examiner. Upon receipt of this request, the Regional Director or designee shall appoint within five (5) calendar days an Examiner who shall possess the qualifications specified in Appendix A to this part.

**§ 1211.1-12 Investigation by Grievance Examiner.**

(a) *Scope of investigation.* The Examiner shall conduct an investigation of a nature and scope appropriate to the issues involved in the grievance.

Unless waived by the volunteer, a hearing must be held if the Examiner finds that the grievance involves disputed questions of fact that go to the heart of the agency determination. Only those facts found necessary by the Examiner on which to base his or her findings go to the heart of the Agency determination.

If the grievance does not involve such disputed questions of fact, or if the volunteer waives a hearing, the Examiner need not hold a hearing but must provide the parties an opportunity for presentation of their respective positions. At the Examiner's discretion, the investigation may include:

- (1) The securing of documentary evidence,
- (2) Personal interviews, including telephone interviews,
- (3) Group meetings,
- (4) Affidavits, written interrogatories or depositions.

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

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

(2) Attendance at the hearing will be limited to persons determined by the Examiner to have a direct connection with the grievance. If requested by the volunteer, the Examiner must open the hearing to the public.

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

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

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

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

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

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

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

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

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

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

(5) The Examiner must authorize payment of travel expenses and per

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diem at standard Government rates for the volunteer and the representative to attend the hearing. Payment of travel expenses and per diem at standard Government rates for other witnesses to attend the hearing are authorized only after the Examiner determines that the required testimony cannot be satisfactorily obtained by affidavit, written interrogatories, or deposition, at a lesser cost.

(d) *Recording of Hearing.* A grievant may make a recording of the hearing at his or her own expense if no verbatim transcript is made. Such a recording is in no way to be treated as the official transcript of the hearing.

(e) *Report of Hearing.* The Examiner shall normally prepare a written summary of the hearing which shall include all documents and exhibits submitted to and accepted by the Examiner during the course of the grievance. An Examiner may require a verbatim transcript if he or she determines that the grievance is so complex as to require such a transcript. If the hearing is reported verbatim, the Examiner shall make the transcript a part of the record of the proceedings. If the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made part of the record of proceedings. In such cases, the summary together with exhibits shall constitute the report of the hearing. The parties are entitled to submit written exceptions to any part of the summary, and these written exceptions shall be made part of the record of proceedings.

## § 1211.1-13 Grievance file and examiner's report.

(a) *Preparation and content.* The Examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing when a hearing was held. The file shall also contain the Examiner's report of findings and recommendations.

(b) *Review by volunteer.* On completion of the inquiry, the Examiner shall make the grievance file available to the volunteer and the representative, if any, for review and comment. Their comments, if any, shall be submitted to

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the Examiner within five (5) calendar days after the file is made available and shall be included in the file.

(c) *Examiner's report.* After the volunteer has been given an opportunity to review the grievance file, the Examiner shall submit the complete grievance file to the Director of VISTA.

## § 1211.1-14 Final determination by Director of VISTA.

The Director of VISTA or designee shall issue a written decision on the appeal to the volunteer within ten (10) working days after receipt of the appeal file. The decision shall include a statement of the basis for the determination, and shall be the final Agency decision.

## § 1211.1-15 Disposition of grievance appeal files.

All grievance appeal files shall be retained by the Director of VISTA after the grievance has been settled, or a final decision has been made and implemented. No part of a grievance or appeal file may be made part of, or included in, a volunteer's official folder.

## § 1211.1-16 Grievance procedure for National VISTA Grant Volunteers.

The grievance procedure for National VISTA Grant Volunteers shall be the same as that provided in this part with the following substitutions of officials:

(a) Informal grievance procedure:

(1) The initiation of an informal grievance for a National Grant VISTA, see § 1211.1-10, shall normally be to the sponsor of the local component. If the grievance involves a matter solely within the control of the ACTION State Office, the volunteer may present the grievance to the State Director or designee in lieu of the local component sponsor.

(2) If the volunteer is not satisfied with the response of the appropriate official (sponsor of local component, or State Director or designee), the volunteer may submit the grievance to the chief executive of the national grantee.

(b) Formal grievance procedure:

The Chief, VISTA Program Development Branch or designee shall replace the Regional Director as the official in § 1211.1-11.