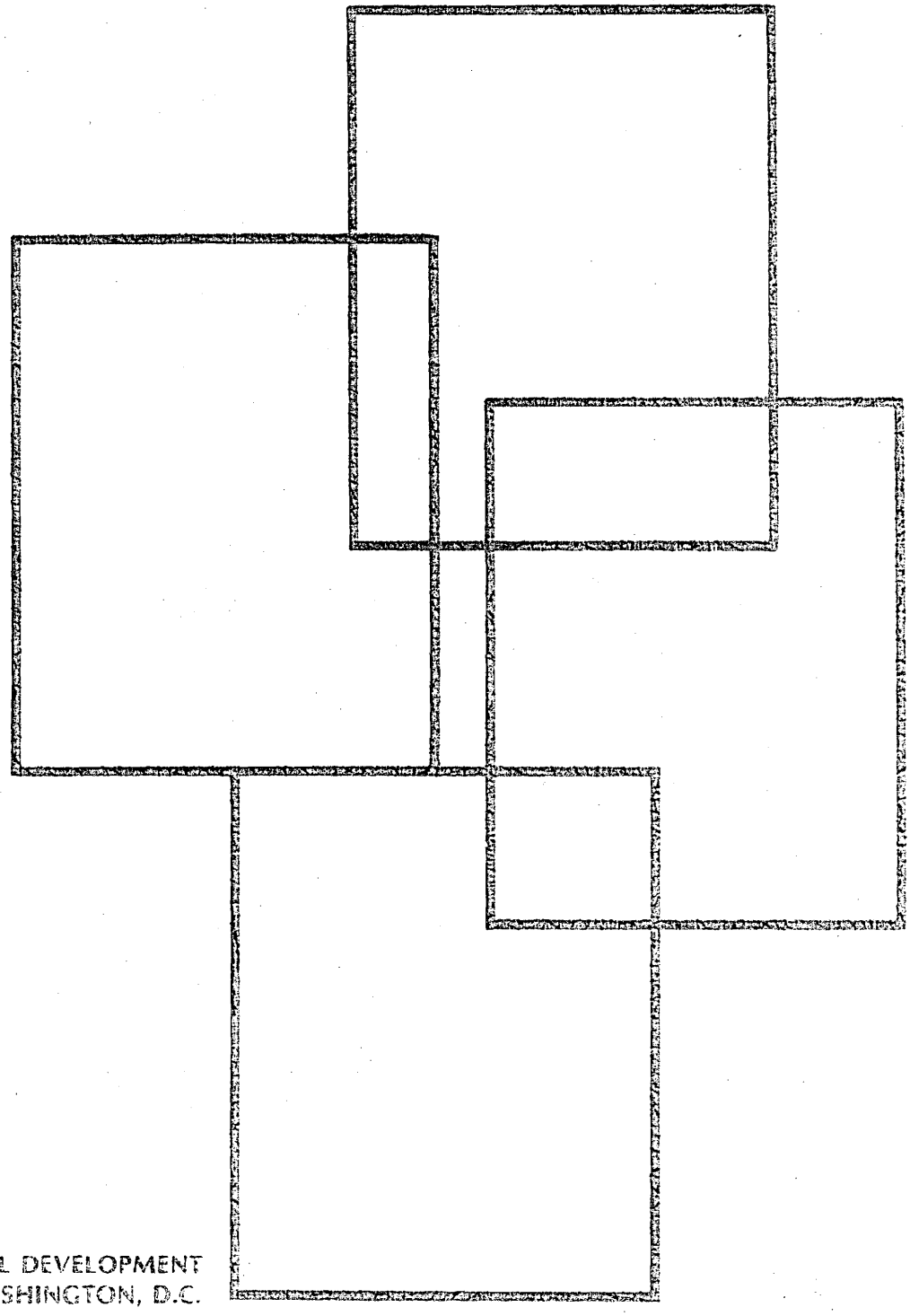
General Personnel Policy



AGENCY for INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C.

BEST AVAILABLE COPY

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE December 13, 1990	TRANS. MEMO NO. 24:25

MATERIAL TRANSMITTED:

Handbook 24 - Personnel Policy

Attachment 2F - Reporting Suspected Offenses and Making Complaints Involving Agency Programs, Operations, Employees or Monies has been reissued in its entirety.

The Table of Contents has been reissued in its entirety to reflect the changes to Attachment 2F and to reflect the correct pagination.

SUPERSEDES:

Pages TC-1 through TC-5 of the Table of Contents and Attachment 2F in its entirety (TM 24:19).

FILING INSTRUCTIONS:

1. Remove superseded material as indicated under SUPERSEDES.
2. File the attached in their appropriate places.
3. Initial the Transmittal Memorandum Checksheet (in the back of the Handbook binder) beside TM 24:25.

* * * * * * *

KEEP THIS TRANSMITTAL MEMORANDUM, which has an up-to-date Checklist for this Handbook on the back. File this TM 24:25 in the front of the handbook binder; discard TM sheet 24:24.

* * * * * * *

Address questions about this Handbook to PFM/PM/PCF.

For additional copies of this Transmittal contact MS/IRM/PE.

CHECKLIST FOR HANDBOOK 24
GENERAL PERSONNEL POLICY

AUTHOR OFFICE: PM/PDE/PP

DATE	MATERIAL TRANSMITTED	TM NO.
11-30-83	Complete Handbook	24:19
Aug.'86	New Handbook Index	24:22
7-27-88	Pages 4-15, 4-16 and Att.4B of Chapter 4	24:23
Various	Pages 2C-1, 2C-2 of Att. 2C; 2D-1, 2D-2 of Att. 2D; 2E-1 thru 2E-4 of Att. 2E	24:24
Various	The Table of Contents and Att. 2F	24:25

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK TRANSMITTAL MEMORANDUM	DATE	TRANS. MEMO NO.

MATERIAL TRANSMITTED:

Handbook 24 - General Personnel Policy

This Handbook is part of the new handbook series which the Agency has developed to replace the AID Manual Orders. It supersedes Manual Orders 402.1, 403.1, 404.1, 441.2, 442.2, 443.1, and 443.2. It describes the AID personnel program and enunciates overall policies and practices as they relate to both the Civil Service and Foreign Service Personnel Systems of the Agency. It also includes general guidance and requirements relating to employee conduct and responsibility.

Material previously contained in the directives which the Handbook supersedes has been incorporated and no substantive changes in policy or procedure are intended. However, specific effort has been made to eliminate internal personnel operations from the Handbook and to simplify and clarify previous language.

Responsibility/Changes

The Office of Personnel and Manpower, Bureau for Program and Management Services (SER/PM), is responsible for this Handbook. Recommended changes should be forwarded to the Policy Development Division, SER/PM.

FILING INSTRUCTIONS:

Initial the Transmittal Memorandum Checksheet (in the back of the Handbook binder) beside TM 24:1.

* * * * * * * *

KEEP THIS TRANSMITTAL MEMORANDUM, and file it in the front of the Handbook binder.

* * * * * * * *

Address questions about this Handbook to SER/PM/PD/PP.

KEEP YOUR AID HANDBOOK UP-TO-DATE

AGENCY FOR INTERNATIONAL DEVELOPMENT

HANDBOOK 24

GENERAL PERSONNEL POLICY

TM 24:19
November 28, 1983

PREFACE

Early in 1972 the Agency made the decision to convert the AID manual orders to a series of specialized handbooks. In compliance, SER/PM has developed new personnel handbooks to replace existing personnel manual orders. The objectives have been:

-- To condense and simplify directive material.

-- To place, to the extent practicable, all information and instructions of general Agency-wide utility on a given subject in one location.

-- To highlight principal personnel policies, rules, and regulations.

The personnel handbooks include those rules, regulations, and operating procedures which affect more than one Office, Bureau, or Mission. They also incorporate pertinent Uniform State/AID/USIA Regulations and portions of the Federal Personnel Manual. They do not include detailed background information, functional statements, or internal personnel office procedures, unless this information is essential to users generally.

There are ten volumes:

Handbook 24, General Personnel Policy
Handbook 25, Employment and Promotion
Handbook 26, Position Classification, Pay, and Allowances
Handbook 27, Attendance and Leave
Handbook 28, Training and Staff Development
Handbook 29, Employee Relations and Benefits
Handbook 30, Separation and Disciplinary Actions
Handbook 31, Foreign National Personnel
Handbook 32, Personnel Actions, Records, and Reports
Handbook 33, Overseas Position Management
(Existing handbook, formerly an attachment to M.C. 435.4, designated as an AID Handbook)

Each handbook is organized into chapters dealing with a topic within the general subject area indicated by the title. A table of contents is included in each handbook. The Transmittal Memorandum for each handbook will indicate which manual orders and manual circulars it supersedes; concurrently, cancellation notices are distributed to all holders of manual orders.

Personnel Handbooks will not all be distributed at once. Accordingly, there will be an interim period where both manual orders and handbooks in the personnel area will be in Agency-wide use. Manual orders and manual circulars will remain in effect until they are specifically superseded by a handbook and canceled by a Manual Transmittal Letter.

Supervisors, employees, and administrative/executive officers should use the handbooks for general guidance in all matters of personnel to which they pertain. For unusual problems or counseling needs, the appropriate office in M/PM should be contacted.

N O T E

Throughout this Handbook, masculine pronouns are to be interpreted as including both men and women, unless the context specifically excludes this interpretation. Future revisions will take into account the AID directive (HB 18, Part I, 2E) of 12/30/75 on the avoidance of sex-biased language.

HANDBOOK 24

GENERAL PERSONNEL POLICY

TABLE OF CONTENTS

Page

Chapter 1 - Basic Personnel Policy 1-1

1A. Purpose 1-1

1B. Overall Agency Objectives and Role of the Personnel System 1-2

1C. Scope 1-4

1D. Definition 1-4

1E. Authorities 1-5

1F. Responsibilities 1-5
1. Managers 1-5
2. First Line Supervisors 1-5
3. The AID Office of Personnel Management (M/PM) 1-6
4. Employees 1-7

Chapter 2 - Employee Responsibilities, Conduct and Political Activity 2-1

2A. Purpose 2-1

2B. Agency Ethics Officials 2-1

2C. Policy and Authorities for Current Employees 2-1

2D. Financial Disclosure 2-2
1. Executive Personnel Financial Disclosure Reports ... 2-2
2. Confidential Statements of Employment and Financial Interest 2-7

2E. Employee Responsibility 2-9

2F. Policy and Authorities Regarding Conflicts of Interest for Former Employees 2-9

Page

Att. 2A - Code of Ethics for Government Service
Att. 2B - 18 U.S.C., Sections 203, 205, and 208
Att. 2C - Uniform Regulations on Employee Responsibilities and Conduct
Att. 2D - Title 22, Gifts and Decorations from Foreign Governments
Att. 2E - Uniform Regulations on Speaking, Writing and Teaching
Att. 2F - Reporting Suspected Offenses Involving Agency Programs, Operations, Employee or Monies
Att. 2G - Political Activity of Federal Employees
Att. 2H - Executive Personnel Financial Disclosure Report (SF-278)
Att. 2I - Confidential Statement of Employment and Financial Interest (OF-106)
Att. 2J - Confidential Statement of Employment and Financial Interest (AID 4-450)
Att. 2K - 18 U.S.C., Section 207
Att. 2L - Post-Employment Conflict of Interest Regulations
Att. 2M - Summary of the Post-Employment Restrictions of the Ethics In Government Act of 1978
Att. 2N - Administrative Enforcement Procedures of Post-Employment Restrictions

Chapter 3 - Personnel Management Evaluation 3-1

3A. Purpose 3-1

3B. Scope 3-2

3C. Authorities 3-2

3D. Responsibilities 3-2

3E. Procedures 3-3
1. Evaluation Plan Elements 3-3
2. General Procedures 3-4
3. Establishment of AID Personnel and AID's Personnel Management Goals and Action Plans 3-4

Appendix 3A. - Personnel Management Evaluation Checklist for Managers and Supervisors 3A-1
3A. Purpose 3A-1
3B. Definition 3A-1
3C. Responsibilities 3A-2
3D. Use of the Checklist 3A-2

Page

3E. Timing and Reporting 3A-2

3F. Checklist 3A-2
1. Planning and Work Organization 3A-2
2. Staffing 3A-5
3. Managing Performance 3A-7
4. Improving Personnel Management 3A-9

Chapter 4 - Labor Management Relations 4-1

4A. Purpose 4-1

4B. Policy 4-1
1. Federal Policy 4-1
2. Agency Policy 4-2

4C. Scope 4-2

4D. Definitions 4-2

4E. Authorities 4-2

4F. Responsibilities 4-2

4G. Labor-Management Relations in the Civil Service 4-3
1. Background 4-3
2. Title VII, Civil Service Reform Act 4-3

4H. Labor-Management Relations in the Foreign Service 4-4
1. Background 4-4
2. Chapter 10, Foreign Service Act of 1980 4-5

4I. Specific Policy Guidelines 4-7
1. Employee Rights 4-7
2. Representation Rights and Duties of Unions 4-8
3. Management Rights 4-9
4. Negotiations 4-10
5. Implementation of Labor-Management Relations at Foreign Service Posts 4-11

Page

6. Unfair Labor Practices 4-13
7. Negotiated Agreement 4-16
8. Dues Deductions 4-16
9. Use of Official Time 4-16

4J. Savings Provision 4-17

Att. 4A - Title VII, Civil Service Reform Act of 1978
Att. 4B - Negotiated Agreement Between AID and AFGE
Att. 4C - Chapter 10, Labor Management Relations

Chapter 5 - The AID Equal Opportunity Program 5-1

5A. Purpose 5-1

5B. Scope 5-1

5C. Definitions 5-1

5D. Authorities 5-2

5E. Background 5-3

5F. Responsibilities 5-3
1. The AID Administrator 5-3
2. The Director of Equal Opportunity Programs 5-4
3. The Assistant Administrator for Management (AA/M) .. 5-4
4. Bureau/Office Heads and Mission Directors 5-5

5G. The AID Equal Opportunity Program 5-5

5H. Dissemination of Informaton 5-6

Appendix 5A. - Employee Discrimination Complaint Process 5A-1

I. Purpose 5A-1
II. Nomination, Selection, Training, Evaluation of EEO Counselors 5A-1
III. Precomplaint Procedure..... 5A-2
A. Representation..... 5A-2
B. Consultation with EEO Counselor..... 5A-2
C. Responsibility of EEO Counselor..... 5A-2

Page

IV. Filing and Presentation of a Formal Complaint of Discrimination 5A-3
A. Time Limits 5A-3
B. Where To File 5A-3
C. Presentment of Complaint 5A-4
D. EEO Counselor's Report 5A-4
E. Acceptance, Rejection or Cancellation of Complaint 5A-4
V. Relationship to Other Complaint Procedures 5A-5
A. Mixed Cases 5A-5
B. Complaints Pursuant to the Negotiated Grievance Procedure 5A-6
VI. Investigation of a Complaint 5A-6
VII. Adjustment of Complaint 5A-7
VIII. Proposed Agency Decision 5A-7
IX. Hearing Procedure 5A-8
A. Complaints Examiner 5A-8
B. Arrangements for Hearing 5A-8
C. Conduct of Hearing 5A-8
D. Powers of Complaints Examiner 5A-9
E. Witnesses at Hearing 5A-9
F. Record of Hearing 5A-9
G. Findings, Analysis and Recommendations 5A-9
H. Cost of Hearings 5A-10
X. Avoidance of Delay 5A-10
XI. Final Agency Decision and Notice of Right to Appeal. 5A-10
XII. Attorney's Fees 5A-11
XIII. Appeal to the Equal Employment Opportunity Commission 5A-11
A. Entitlement 5A-11
B. Where to Appeal 5A-12
C. Time Limit 5A-12
XIV. Relationship to Other Appeals 5A-12
XV. Reports to the Commission 5A-13
XVI. Joint Processing and Consolidation of Complaints ... 5A-13
XVII. Freedom from Restraint, Interference, Coercion or Reprisal 5A-13
XVIII. Corrective Actions 5A-14
A. Corrective Action Involving an Applicant 5A-14
B. Corrective Action Involving an Employee 5A-15
XIX. Civil Actions 5A-16

Page

Appendix 5B - Class Discrimination Complaint Process 5B-1

I. Definitions 5B-1
II. Precomplaint Processing 5B-1
III. Filing and Presentation of a Class Complaint 5B-2
IV. Acceptance, Rejection or Cancellation 5B-3
V. Notification and Opting Out 5B-5
VI. Avoidance of Delay 5B-5
VII. Freedom from Restraint, Interference, Coercion and Reprisal 5B-5
VIII. Obtaining Evidence Concerning the Complaint 5B-6
IX. Opportunities for Resolution of the Complaint 5B-7
X. Hearing 5B-7
XI. Report of Findings and Recommendations 5B-7
XII. Agency Decision 5B-8
XIII. Notification to Class Members of Decision 5B-9
XIV. Corrective Action 5B-9
XV. Appeal to the Office of Review and Appeals 5B-10
XVI. Reopening and Reconsideration by the Commissioners . 5B-11
XVII. Civil Actions - Statutory Right 5B-11
XVIII. Notice of Right 5B-11
XIX. Effect on Administrative Processing 5B-11

Appendix 5C - Discrimination Complaints Based on Handicap 5C-1

I. Purpose 5C-1
II. Definitions 5C-1
III. General Policy 5C-2
IV. Reasonable Accommodation 5C-2
V. Employment Criteria 5C-3
VI. Preemployment Inquiries 5C-4
VII. Physical Access to Buildings 5C-4
VIII. Processing Complaints - General 5C-4
IX. Coverage 5C-5

Att. 5A - Complaint File for Individual and Class Complaints
Att. 5B - Request for Reasonable Accommodation

Chapter 6 - Reserved 6-1

Chapter 7 - Designation Of Acting Personnel

7A. Purpose 7-1

7B. Applicability 7-1

Page

7C. Policy 7-1
1. Situations Requiring Designations 7-1
2. Authority to Make Designations 7-1
3. Officers Eligible for Designations 7-1
4. Forms of Designations 7-2
5. Authority of Acting Heads of Organizational Units .. 7-2

Chapter 8 - Designation of Acting Mission Directors

8A. Purpose 8-1

8B. Applicability 8-1

8C. Designation of Acting Director of Mission 8-1
1. When a Deputy Director of Mission is Present 8-1
2. When no Deputy Director is Present 8-1

8D. Authority of Acting Directors of Mission 8-2

CHAPTER 1

BASIC PERSONNEL POLICY

1A. Purpose

1. This Chapter expresses the underlying principles and philosophies to which AID is committed in the selection, development, and utilization of its personnel resources. It deals with general principles and overall objectives rather than the details of the specific procedures, requirements, and standards to be applied. These are spelled out in appropriate chapters of other AID personnel handbooks. AID is committed to a basic personnel policy approach which seeks to balance program requirements with its obligation to the people who carry them out.

2. Objectives of the foreign economic assistance program cannot be realized unless people with the abilities and motivation required to do the work are in the right locations at the time they are needed. Personnel management is the process which seeks to achieve this objective. The general policies and philosophy outlined in this Chapter are designed to serve as a test against which specific personnel practices and procedures, as well as individual personnel decisions, may be measured to determine whether they are consistent with overall AID personnel policy objectives.

3. In any organization there may arise conflicts of principle, or valid competing interests or concerns, when specific decisions have to be made. Within AID such conflicts may arise, for example, in weighing:

a. Management's needs and concerns in carrying out program objectives as against the needs and career objectives of individual employees.

b. The overall good of AID as an Agency as against the goals of individual bureaus or offices.

c. Short run advantages or disadvantages as against long run considerations.

d. Skills of the current work force as against the kinds of skills needed as AID programs and objectives evolve.

e. Budget and ceiling limitations as against program objectives.

f. Foreign Service rank-in-person concepts as against Civil Service position-based concepts.

1A

4. These and other types of conflict will inevitably occur and must be recognized as legitimate. The overall purpose in this statement of AID personnel policies is to provide a guide by which valid competing values and concerns may be accommodated, to the degree humanly possible, within overriding concepts of fairness and equity and with full adherence, in spirit and letter, to those requirements of law, executive order, regulation, and public policy which must apply.

1B. Overall Agency Objectives and Role of the Personnel System

1. AID exists to carry out the objectives of the United States foreign assistance program. The ultimate goal of personnel management in AID must be to facilitate the accomplishment of this mission.

2. In doing this, however, we must also be concerned with the means by which this end is to be accomplished. AID is committed to a policy of dealing with its employees fairly and equitably and in full compliance with all public policies applicable to Federal personnel activities including merit principles contained in the Civil Service Reform Act of 1978 (CSRA) and Foreign Service Act of 1980 (FSA), and that of equal employment opportunity for all persons including members of minority groups and women. AID does not view these objectives to be in conflict. Unless personnel practices comply with this test, and are perceived by most employees as doing so, the sense of commitment to program accomplishment will suffer and the success of the mission will be jeopardized.

3. The general principles and overall objectives which underlie the operation of AID's personnel system are:

a. Workforce Planning. To establish AID long- and short-range workforce requirements (based on program, budget, and workload factors) in terms of skills needed to fulfill AID's mission. In accordance with Section 2402 of the FSA, AID is required to establish a five-year workforce requirements forecast.

b. Work Organization. To organize and distribute duties, to delegate responsibility and matching authority among Agency domestic elements and overseas establishments in such manner as to utilize employee skills and knowledge most effectively with maximum feasible efficiency and economy.

c. Recruitment. To take affirmative action to identify, attract and recruit qualified and highly motivated employees to meet the Agency's workforce needs; to supply qualified candidates as promptly as possible while ensuring that candidates are chosen solely on the basis of actual or potential ability.

1B

d. Compensation. To compensate employees equitably for their work within AID's framework of classification standards and pay plans; to remain abreast of salary trends in government, in the private sector and, at overseas posts; to be completely aware of payment standards within host countries to ensure that employee reimbursement does not exceed nor fall below appropriate levels; and to identify positions which can be restructured to reduce salary costs and still attract qualified employees, and positions which should be restructured to higher grades and commensurate pay.

e. Career Development. To provide employees at all levels, insofar as possible, with opportunity for career development and advancement consistent with organizational needs and employee aspirations; to identify employees with potential for growth and assist and encourage such employees in the development and use of their full capabilities; and to maintain a method of ensuring that employee promotions are made on the basis of merit.

f. Creative/Productive Environment. To establish and maintain a work environment that stimulates individual initiative, imagination, innovation, productivity, cost consciousness, loyalty, and good morale; to assist employees to achieve personal satisfaction and pride in their work; to recognize and reward quality performance and initiative; and to maintain an effective flow of communications among employees and managers, upward, downward, and laterally.

g. Employee-Management Relations. To treat all employees equitably and fairly; to ensure that supervisors/managers at all levels are prepared and readily available to their employees for problem assistance; to provide counseling; to deal promptly and fairly with employee grievances; and to maintain active relations with recognized labor unions and their designated representatives as provided for by statute and in keeping with the mutual interests of employees and the Agency.

h. Supervisor/Manager Selection and Training. To select supervisors/managers on the basis of demonstrated capability and potential for leadership; to provide training as required and appropriate in basic management principles, administrative practices and procedures, and special subjects such as Equal Employment Opportunity and appraising employee potential for promotions; to identify and meet long-range development needs of supervisors/managers; and to evaluate personnel management knowledge and practice of supervisors/managers and carry out appropriate remedial measures.

i. Deficiencies in Performance or Conduct. To provide appropriate guidance, assistance, and encouragement to employees whose work does not meet expected levels of performance; and to plan and implement appropriate actions such as position change and, if necessary, separation should these improvement provisions fail to raise performance to a satisfactory level.

1B

j. Equal Employment Opportunity. To plan and complete affirmative actions to provide equality of opportunity for employment, development and advancement and upward mobility to all applicants and employees regardless of race, sex, religion, age, physical handicap, or national origin; to establish a system for ensuring that all supervisors/managers understand and are discharging their EEO responsibilities; and to regularly reassess the Agency's EEO efforts to ascertain that such efforts are meeting the needs of the workforce and the requirements of Federal policy.

4. AID's policy regarding the proper role of the unified personnel system is to build an integrated approach which makes optimum use of Foreign and Civil Service systems. AID is a foreign affairs agency. Its objective is to establish a rational basis for making decisions about the filling of individual positions which will give appropriate and balanced consideration to such factors as:

a. The need for continuity and institutional stability in particular positions.

b. The need for or desirability of overseas experience in particular assignments.

c. The existence or lack of counterpart positions in the Missions.

d. The need to create reasonable opportunities for rotation of Foreign Service personnel.

e. The need to provide career development and advancement opportunities for employees under both systems.

f. The need to provide maximum opportunity for continuity of employment to employees under both systems who are affected by contingencies that are beyond their control.

g. Relative qualifications of individuals under consideration.

1C. Scope

This chapter applies to all employees of AID.

1D. Definition

For the purposes of this Chapter, personnel management is defined as all those activities necessary to plan for, acquire, develop, assign, support, supervise and, if appropriate, retire or separate the personnel needed to carry out the AID mission throughout the world.

1E. Authorities

1. Civil Service Reform Act of 1978.

2. Foreign Service Act of 1980.

3. Foreign Assistance Act of 1961, as amended.

1F. Responsibilities

There are four centers of personnel management responsibility, each of which has a major role to play and must complement one another to bring about the most effective response to the needs of the Agency and its employees. These four are: (a) managers, (b) first line supervisors, (c) the Office of Personnel Management and (d) employees (both as individuals and speaking through their duly recognized employee organizations). The basic responsibilities of each of these participants in the personnel management process are:

1. Managers

Managers in AID are ultimately responsible for setting the tone for personnel management. In managing people to meet program objectives they must be concerned with and very much involved in the welfare, morale, safety, and wellbeing of the employees reporting to them. They must bear these objectives in mind in fulfilling their primary roles of:

a. Determining the jobs that need to be performed to carry out the program;

b. Determining the number and kinds of skills needed;

c. Determining organization structure, delegations of authority, work methods and work flow, and individual task assignments; and

d. Creating an atmosphere which takes into consideration the effect of management decisions on people.

2. First Line Supervisors

a. Supervisors are a part of management, and to the extent they participate in the kinds of decisions and actions described above they are charged with the responsibilities outlined. However, they also have unique responsibilities in dealing with the employees under their immediate supervision which only they can properly perform. These include such basic supervisory duties as:

(1) Conscientiously evaluating employees' performance and potential;

(2) Motivating employees by example, encouragement, and recognition when warranted;

1F2

(3) Exercising discipline when called for;

(4) Counseling employees on such issues as career potential, training opportunities, and career development plans;

(5) Resolving employee grievances at the informal stage; and

(6) Making individual personnel decisions such as recommendations for assignment and training.

b. Personnel policy statements can only become realities to the extent that they are followed by supervisors in carrying out their personnel management responsibilities.

3. The AID Office of Personnel Management (M/PM)

a. M/PM has the basic responsibility for devising and operating the personnel systems, procedures, and programs which make it possible for the other participants in the personnel management process to carry out their responsibilities properly. It also has the responsibility for monitoring AID's compliance with personnel requirements imposed by outside authorities, including the U. S. Office of Personnel Management (OPM), as well as policies and requirements contained in AID's personnel handbooks. M/PM is also responsible for evaluating AID's personnel management effectiveness and bringing to the attention of top management the need for action to bring about improvement.

b. Among the specific programs for which M/PM has operational responsibilities are:

(1) Workforce Planning;

(2) Recruitment;

(3) Salary Establishment and management;

(4) Personnel Appointments;

(5) Foreign and Civil Service assignment systems;

(6) Senior Executive Service and Senior Foreign Service;

(7) Employee performance evaluation;

(8) Merit promotion;

(9) Promotion in rank systems for Foreign Service employees;

1F3b

(10) Monitoring position management and classifying GS and FS positions;

(11) Career counseling;

(12) Career development and training;

(13) Employee relations;

(14) Labor relations;

(15) Incentive awards;

(16) Personnel management evaluation;

(17) Reduction in force; and

(18) Retirement and other separations.

c. M/PM is responsible for integrating these and other operational aspects of an overall personnel management program for AID to create a framework for the kind of personnel system which is responsive to management's needs, in a context where there is also awareness of and sensitivity to employee needs and aspirations. In addition, M/PM has a basic role to play in establishing the framework for relationships with employee organizations.

4. Employees

a. Employees, as individuals and through the recognized organizations which may represent them, are an integral part of the personnel management process. They have obligations and responsibilities to which they must be committed so long as they are employees of AID.

b. As individuals, employees must:

(1) Perform the duties and responsibilities properly assigned to them conscientiously and with integrity.

(2) Conduct themselves, both on and off the job, in a manner that is fully consistent with their status as AID employees and in compliance with the spirit and letter of Federal and AID codes of employee conduct.

(3) In the case of employees assigned overseas, the responsibility for constructive conduct extends to the employee's dependents and members of the family who accompany the employee overseas. They are representatives of the United States and, as such, must reflect in their personal behavior their acceptance of the added responsibility this entails.

1F4b

(4) Avoid the appearance of or actual conflicts of interest that may cast doubt on the integrity of their official acts.

(5) Make known their concerns and interests on personnel issues and practices through the channels provided for such expression, including their recognized employee organizations.

c. It is Agency policy to recognize the constructive role that employee organizations must play if the objective of an integrated balance of interests and concerns is to be realized. This can only happen if both management and employee organizations approach the achievement of this objective constructively and with full understanding of the proper role each party must play. Agency policy with respect to employee organizations is contained in Chapter 4 of this Handbook.

CHAPTER 2

EMPLOYEE RESPONSIBILITIES, CONDUCT AND POLITICAL ACTIVITY

2A. Purpose

This Chapter describes the Agency's ethics program and contains the statutory and regulatory provisions governing employee responsibilities and conduct, including limitations on political activity, financial disclosure requirements and post employment restrictions.

2B. Agency Ethics Officials

1. The Designated Agency Ethics Official/Counselor on Ethical Conduct and Conflicts of Interests (Counselor) is the officer or employee who is designated by the head of the Agency to coordinate and manage the Agency's ethics program in accordance with the Ethics in Government Act of 1978, as amended, applicable Executive Orders, governmentwide regulations issued by the U.S. Office of Personnel Management (OPM) Office of Government Ethics and Agency regulations.

2. The Designated Agency Ethics Official/Counselor for AID is the Senior Deputy General Counsel. The alternate is the Assistant General Counsel for Employee and Public Affairs.

3. The Assistant General Counsel for Employee and Public Affairs (GC/EPA) and the Attorney Advisors assigned to that office are designated Deputy Agency Ethics Officials/Deputy Counselors. Receipt of any document by a Deputy shall be deemed to be receipt of the document by the principal officer.

2C. Policy and Authorities for Current Employees

1. Code of Ethics for Government Service. All AID employees are expected to adhere to the principles expressed in the Code. It is also applicable to the families of employees where adherence is implicit or where nonadherence may tend to be prejudicial to the foreign policy interests of the U.S. Government. The text of the Code is at Attachment 2A.

2. Statutory Provisions. Sections 203, 205 and 208 of Title 18, United States Code, are set out as Attachment 2B. In addition, the regulations on Employee Responsibilities and Conduct at Section 10-735-216 set forth additional miscellaneous statutory provisions. The regulations are in Attachment 2C.

3. Uniform Regulations on Employee Responsibilities and Conduct. For text see Attachment 2C.

4. Uniform Regulations on Gifts and Decorations from Foreign Governments. For text see Attachment 2D.

5. Uniform Regulations on Speaking, Writing, and Teaching. For text see Attachment 2E.

6. Reporting of Crimes Involving Government Officials and Employees or Similar Offenses by Other Persons. See Attachment 2F.

7. Political Activity. See Attachment 2G.

2D. Financial Disclosure

1. Executive Personnel Financial Disclosure Reports

a. Scope. The following employees ("covered employees") must file an Executive Personnel Financial Disclosure Report. (SF 278, hereinafter referred to as "report," is set forth at Attachment 2H.)

(1) An employee of the Agency, including a special Government employee, whose position is classified at Executive Level, GS-16, AD-16, SES, or above;

(2) An officer of the Foreign Service whose class, i.e., personal rank, is SFS, regardless of the rank of the position held, e.g., FS-1 in an SFS position is not a covered employee but an SFS employee in an FS-1 position is a covered employee;

(3) An employee in a position which is of a confidential or policy-making character (Schedule C) unless the position has been excluded by the Office of Government Ethics. (Note: The Office of Government Ethics has excluded all secretarial and motor vehicle operator Schedule C positions);

(4) The Designated Agency Ethics Official; and

(5) Such other employees as the Office of Government Ethics may designate. (Note: To date no such positions have been designated.)

b. Filing Requirements

(1) Initial report. A covered employee must file an initial report as follows:

(a) An individual who assumes a position of a covered employee must file within thirty days of assuming the position (e.g., a GS-15 promoted to GS-16) unless the individual has left another covered

position within thirty days prior to assuming the new position; or has already filed a report in connection with a nomination or as a candidate for the position.

(b) An individual who is nominated for a position requiring the advice and consent of the Senate must file within five days of the date the nomination is forwarded to the Senate.

(2) Annual Report. An individual who occupies a covered position and performs the duties of that position for more than sixty days during any calendar year must file on or before May 15 of the succeeding calendar year. The reports filed on or before May 15 are to include information for the preceding calendar year.

(3) Termination Report. An individual whose employment in a covered position terminates (e.g., retirement) must file within thirty days of termination unless the individual has accepted employment in another covered position. The report required by this subsection covers the preceding calendar year, unless the May 15 report covering that year has been filed, plus the period of the current year up to the individual's termination from employment.

(4) Penalty for Failure to File or Falsifying Reports. The Attorney General may bring a civil action in any U.S. District Court having jurisdiction against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required by the Ethics in Government Act of 1978, as amended. The court in which such action is brought may assess against such individual a civil penalty not to exceed $5,000. Knowing or willful falsification of information may also subject the reporting individual to criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both.

c. Procedures for Initial Reports

(1) Presidential Appointment of the Principal Officers of the Agency. The Designated Agency Ethics Official or designee shall (1) obtain a completed report from proposed presidential appointees within five days of the submission of the individual's name to the Senate for its advice and consent, and (2) transmit the report to the Office of Government Ethics.

(2) New or Promoted Employees. The Washington Division (M/PM/W), the Overseas Division (M/PM/OS), or the Executive Personnel Management Staff (M/PM/EPM) shall obtain a completed report from each new employee appointed to, or employee being converted or promoted to, a covered position. The report must be submitted to the General Counsel within thirty days after the date of the employee's appointment or promotion.

d. Procedures for Annual Reports

(1) On March 1 of each year, the head of each AID Office or Bureau is requested to designate a subordinate officer who will--

(a) Identify the covered employees, i.e., every employee who must file a report by reason of the employee's personal rank in the Foreign Service or of the position which the employee occupies in the Civil Service;

(b) Distribute the reports to these employees;

(c) Request that each covered employee fill out a report;

(d) Obtain a current position description for each covered employee and identify the employee to whom the description relates;

(e) Request missing information from an employee who has filed an incomplete report; and

(f) Forward the completed reports to the Office of the General Counsel no later than May 15 with certification that all employees have complied.

(2) The Office of the General Counsel will on March 1 of each year issue an AID General Notice initiating the SF 278 submission cycle.

(3) As an aid in identifying covered employees, the Office of Personnel Management (M/PM/PDE/RP) will provide to each Office or Bureau a list of employees whose incumbency in a Civil Service position or whose personal Foreign Service rank subjects them to the reporting obligations. In those Offices or Bureaus having an Executive Officer, that officer is normally assigned this responsibility.

(4) In case of doubt whether an employee is obligated to submit a report, the officer required to obtain the report from the employee should consult GC/EPA.

(5) The name and location of each officer who fails or refuses to submit a report shall be provided to GC/EPA, together with a statement of the efforts made by the Office or Bureau to obtain the officer's compliance with the obligation.

(6) Overseas Employees. Geographic Bureaus and Offices having overseas employees (e.g., IG) will be responsible for reports from employees assigned overseas as well as from their AID/W employees.

(7) Complement and Detailed Employees. Acting through its Administrative Officer, M/PM will obtain position descriptions and completed reports from all covered employees on complements and domestic and overseas details.

e. Procedures for Termination Reports

(1) Completed reports will be obtained by the principal AID officer at overseas posts for employees overseas, and by M/PM/W, M/PM/OS and M/PM/EPM for employees in AID/W. The completed report will be forwarded to the Designated Agency Ethics Official within thirty days after leaving the covered position .

(2) Periodically, M/PM will provide the Designated Agency Ethics Official with a list of employees who have been separated. The Designated Agency Ethics Official will notify M/PM of any former employees who have not filed reports. M/PM will notify any such former employees of the requirement to file and the applicable penalties.

f. Public Release of Reports

(1) As required by the Ethics in Government Act of 1978, as amended, reports are available to the public upon written application.

(2) A person requesting a copy or inspection of reports is required to make a written application stating:

(a) The requestor's name, occupation and address;

(b) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(c) That the requestor is aware of the prohibitions on obtaining or using the report.

(3) A report shall be made available to the public for a period of six years after receipt of the report by GC/EPA.

g. Failure to File

(1) When the Office of the General Counsel has been informed by a Bureau or Office that an employee has failed or refuses to submit a completed report, the General Counsel or designee, shall take the following steps:

(a) Communicate to the employee the reasons for which the obligation to file has been applied to the employee, and the General Counsel's obligation:

1. To refer to the Attorney General the name of any individual who the Office of the General Counsel has reason to believe has knowingly and willfully falsified or knowingly or willfully failed to file or to report any information required to be reported; or

2. To recommend that disciplinary action be taken by the Agency against the employee.

(b) Notify the employee in writing that the decision to refer the employee's name to the Attorney General as well as to take any appropriate disciplinary action in accordance with applicable law or regulation is under consideration and that the employee is required within ten working days of receipt of the written notice to submit the completed report or to furnish any evidence or arguments before further action is taken.

(c) After receipt of the employee's reply or where no reply has been submitted, review the entire available record, decide whether to accept the employee's argument, or to refer the employee's name to the Attorney General or recommend to M/PM that disciplinary action be taken (or both) and notify the employee in writing of the decision and the reasons for it.

(2) An employee may appeal a decision of the General Counsel or designee that:

(a) The employee must submit a report;

(b) Specific information is required to be submitted;

(c) The required information has not been submitted;

(d) A conflict of interest exists; or

(e) The matter be referred to the Attorney General and/or disciplinary action be proposed.

(3) The appeal directed to the General Counsel shall be in writing, and shall be sent within twenty working days after an employee receives written notice of the decision to be appealed. This appeal shall not preclude any other appeal provided by law or regulation of OPM or of the Office of Government Ethics.

(4) The General Counsel or designee shall decide the appeal on the written record and notify the employee in writing of the decision and of the reasons for it.

2. Confidential Statements of Employment and Financial Interest

a. Scope

(1) Obligated Employees. Those AID employees, including special Government employees, specified in 22 CFR 10.735-401, other than those designated as "not required to submit statements" by 22 CFR 10.735-402 (see Attachment 2C, "obligated employees") must submit Confidential Statements of Financial Interests (Confidential Statements). (Note: To date the AID Administrator or designee has not made any exclusion determination under 22 CFR 10.735.402(a) nor has the AID Administrator granted any waiver under 22 CFR 10.735-402(c). Applications for exclusion determination or waiver may be directed to GC/EPA).

(2) Forms. The Confidential Statement of Employment and Financial Interests (For Use By Government Employees), Optional Form 106, is set forth at Attachment 2I and the Confidential Statement of Employment and Financial Interests (For Use By Special Government Employees), Form AID 4-450, is set forth at Attachment 2J. (The forms are hereafter referred to as Confidential Statements.)

b. Submission Requirements.

(1) Initial Statement. At least ten days prior to entrance on duty, a prospective obligated employee (new, converted or promoted), including a special Government employee, shall submit a Confidential Statement to the Personnel Staffing Specialist (Backstop) assigned to process the employee's personnel actions.

(2) Annual/Extension Supplementary Statements

(a) As of September 30 of each year, an obligated employee, other than a special Government employee, shall submit a Supplementary Confidential Statement indicating any changes in, or additions to, the information previously submitted. The supplementary report shall be submitted through the officer designated in subject 2D1(d) to the obligated employee's Backstop.

(b) At the time the appointment of an obligated employee who is a special Government employee is extended, the employee shall submit a Supplementary Confidential Statement indicating any changes in, or additions to, the information previously submitted. The supplementary report shall be submitted to the employee's Backstop. No action to extend an appointment will be taken unless such supplementary report is submitted not later than ten days prior to the expiration of said appointment.

(c) If no change or addition occurs, a negative (i.e., "no change") report is required.

c. Submission Procedures.

(1) Initial Statement: New, Converted or Promoted Employee. The Office of Personnel Management, M/PM/W, M/PM/OS or M/PM/EPM, shall request a completed Confidential Statement from each prospective employee being appointed to, or employee being converted or promoted to, a civil service position or a personal Foreign Service rank subject to reporting obligations. The Confidential Statement should be enclosed in a sealed envelope marked "Personal Information - Addressee Only" and delivered or sent by internal mail, diplomatic pouch or other suitable means to the (prospective) obligated employee's Backstop.

(2) Extension of a Special Government Employee. The same procedure as outlined in 2c(1) above shall apply to a special Government employee at the time the employee's appointment is extended.

(3) Supplementary Statement. Each officer designated pursuant to Subpart 2D1d(1) (Designated Officer), in addition to the duties therein set forth, will --

(a) Identify the obligated employees;

(b) Distribute reporting forms to these employees;

(c) Request that each obligated employee submit a Supplementary Confidential Statement, as appropriate (see 2D2b (2)(a)), under "Personal Information-Addressee Only" cover to the Designated Officer for forwarding to the Backstop and follow up as required to ensure compliance; and

(d) Report to GC/EPA the name and location of any obligated employee who fails or refuses to submit a Supplementary Confidential Statement, together with a statement of the efforts made to obtain the employee's compliance with the obligation.

(4) Questionable Cases. In case of doubt whether an employee is obligated to submit a Confidential Statement, the officer required to obtain the Statement from the employee should consult GC/EPA.

(5) Overseas Employees. Geographic Bureaus and Offices having overseas employees will be responsible for obtaining Confidential Statements from employees based abroad as well as from their AID/W employees.

(6) Complement and Detailed Employees. Acting through its Administrative Officer, M/PM will obtain Confidential Statements from all covered employees on complements and domestic and overseas details.

d. Action by Backstops. Each Backstop will --

(1) Review each Confidential Statement as received and request missing information from an employee who has submitted an incomplete Statement; and

(2) File completed Confidential Statement.

e. Submission Cycle. The Office of the General Counsel will on July 15 of each year issue an AID General Notice initiating the Supplementary Confidential Statement submission cycle.

f. Obligated Employee Lists. As an aid in identifying obligated employees, the Office of Personnel Management (M/PM/PDE/RP) will, upon receipt of the July 15 AID General Notice each year, provide to each Designated Officer an alphabetical list and an organizational list of employees whose incumbency in a Civil Service position or whose personal Foreign Service rank subjects them to the reporting obligations.

2E. Employee Responsibility

It is the responsibility of each employee to bring to the attention of a Deputy Counselor any actual or potential conflict of interest relative to employment with AID. To assist employees in making a determination as to whether a conflict exists, on January 15 of each year GC/EPA shall issue an AID General Notice advising employees of their responsibilities under this Chapter.

2F. Policy and Authorities Regarding Conflicts of Interest for Former Employees

1. Statutory Provision. Section 207 of Title 18, United States Code, as amended by the Ethics in Government Act of 1978, as amended, is set out at Attachment 2K.

2. Governmentwide Regulations The regulations issued by OPM on postemployment conflicts of interest are set forth at Attachment 2L. In addition, a summary prepared by the Office of Government Ethics is at Attachment 2M.

3. "Senior Employee" Designations

a. Employees at the Executive Level, i.e., Administrator, Deputy Administrator and Assistant Administrators, Chiefs of Mission Classes II, III and IV are Senior Employees under the Ethics in Government Act of 1978.

b. All other Senior Employee positions must be "designated" as Senior Employees by the Office of Government Ethics. The positions must involve significant decision-making or supervisory responsibility and be at a basic rate of pay of GS-17, or above, or within the Senior Executive Service or Senior Foreign Service. The designations are made annually and the Agency's ethics officials shall provide adequate notice of the designations to the affected employees.

4. Administrative Enforcement Procedures of Postemployment Restrictions. For text see Attachment 2N.

ATTACHMENT 2A

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any Person In Government Service Should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

18 U.S.C., Sections 203, 205, and 208

"§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

"(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another--

"(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

"(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

"(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

"Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

"§ 205. Activities of officers and employees in claims against and other matters affecting the Government

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

"(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

"(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

"Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

"Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

"Such certification shall be published in the Federal Register.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"§ 208. Acts affecting a personal financial interest

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decison, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

"Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

"(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

ATTACHMENT 2C

3 FAM 620, Employee Responsibilities and Conduct
Uniform State/AID/USIA Regulations

620.1 Applicability

(TL:PER-465 6-19-78)
(Uniform State/AID/USIA)

These regulations on employee responsibilities and conduct apply to all employees of the three agencies. Subparts A, B, and D apply to employees of other U.S. Government agencies detailed to one of the three agencies.

620.2 Legal Basis

These regulations are issued under Executive Order 11222 of May 8, 1965, as amended, and part 735 of title 5, Code of Federal Regulations.

End Uniform State/AID/USIA Regulations.

22 Code of Federal Regulations

PART 10—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.
10.735-101 Purpose.
10.735-102 Definitions.
10.735-103 Interpretation and advisory service.
10.735-104 Applicability to detailed employees.
10.735-105 Disciplinary action.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

10.735-201 General.
10.735-202 Gifts, entertainment, and favors.
10.735-203 Gifts from foreign governments.
10.735-204 Outside employment and other activity.
10.735-205 Financial interests.
10.735-206 Economic and financial activities of employees abroad.
10.735-207 Use of Government property.
10.735-208 Misuse of information.
10.735-209 Indebtedness.
10.735-210 Gambling, betting, and lotteries.
10.735-211 Activities relating to private organizations and politics.
10.735-212 Wearing of uniforms.
10.735-213 Recommendations for employment.
10.735-214 Transmitting communications and gifts.
10.735-215 General conduct prejudicial to the Government.
10.735-216 Miscellaneous statutory provisions.
10.735-217 Requesting exceptions from certain statutory prohibitions.

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

10.735-301 Conflicts of interest.
10.735-302 Use of Government employment.
10.735-303 Use of inside information.
10.735-304 Coercion.
10.735-305 Gifts, entertainment, and favors.
10.735-306 Miscellaneous statutory provisions.

Subpart D—Statements of Employment and Financial Interests

Sec.
10.735-401 Employees required to submit statements.
10.735-402 Employees not required to submit statements.
10.735-403 Employee's complaint on filing requirement.
10.735-404 Time and place of submission, and forms.
10.735-405 Information required.
10.735-406 Submission of position description.
10.735-407 Supplementary statements.
10.735-408 Review of statements and determination as to conflicts of interest.
10.735-409 Confidentiality of employees' statements.
10.735-410 Effect of employees' statements on other requirements.
10.735-411 Disqualification procedures.

AUTHORITY: EO 11222 of May 8, 1965, as amended; 5 CFR 735.104.

SOURCE: 43 FR 18976, May 2, 1978, unless otherwise noted.

Subpart A—General Provisions

§ 10.735-101 Purpose.

The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts the regulations in this part prescribe standards of conduct and responsibilities for employees and special Government employees and require statements reporting employment and financial interests.

NOTE—These regulations are codified in State 3 FAM 620, AID Handbook 24, and ICA MOA V-A 550.

§ 10.735-102 Definitions.

(a) "Agency" means the Department of State (State), the Agency for International Development (AID), and the International Communication Agency (ICA).

(b) "Employee" means an officer or employee at home or abroad, of an agency named in paragraph (a) of this section, but does not include a special Government employee or a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(c) "Executive order" means Executive Order 11222 of May 8, 1965, as amended.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Special Government employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(f) "Member of an employee's family" means a spouse, minor child, or other member of an employee's immediate household. For the purpose of these regulations "member of an employee's immediate or in-law household" means those blood relations who are residents of the employee's household.

(g) "Counselor" means the agency's Counselor on Ethical Conduct and Conflicts of Interest.

§ 10.735-103 Interpretation and advisory service.

(a) Counseling services on employee responsibilities and conduct are available in each agency. These services are to be coordinated by a Counselor appointed by the agency head. The Counselors are for State: The Legal Adviser; for AID: The Deputy General Counsel; and for ICA: The General Counsel. The Counselor serves as the agency's designee to the Civil Service Commission on matters covered by the regulations in this part and is responsible for coordination of the agency's counseling services under paragraph (b) of this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by these sections are available to deputy counselors designated under paragraph (b) of this section.

(b) Each agency head may designate deputy counselors for the agency's employees and special Government employees. Deputy Counselors designated under this section must be qualified and in a position to give authoritative advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by the regulations in this part. A Washington employee or special Government employee should address any inquiries concerning the regulations in this part to the Counselor. At missions abroad the chief of each agency's establishment designates an officer, preferably the legal officer where one is available, to provide counseling services under the guidance of the Counselor; a single officer may serve all agencies. An employee or special Government employee serving abroad should submit inquiries to the officer designated.

(c) Each agency shall periodically notify its employees and special Government employees of the availability of counseling services and how and when these services are available. A new employee or special Government employee shall be notified at the time of entrance on duty.

§ 10.735-104 Applicability to detailed employees.

All the regulations of Subparts A, B, and D of this part are applicable to an employee of another U.S. Government agency who may be serving on detail or assignment, formally or informally, on a reimbursable or nonreimbursable basis through a Participating Agency Service Agreement or otherwise, with an agency named in § 10.735-102(a). However, disciplinary action shall be taken against such an employee only by the employing agency.

§ 10.735-105 Disciplinary action.

A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action, including separation for cause, which may be in addition to any penalty prescribed by law.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 10.735-201 General.

(a) *Proscribed actions.* An employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Applicability to members of families of employees.* A U.S. citizen employee shall take care that certain responsibilities placed on the employee are also observed by members of the employee's family. These are the restrictions in regard to: Acceptance of gifts (§§ 10.735-202 and 10.735-203); economic and financial activities abroad (§ 10.735-206); teaching, lecturing, and writing (§ 10.735-204(c)); participation in activities of private organizations (§ 10.735-211(c)); and political activities abroad (§ 10.735-211(g)).

§ 10.735-202 Gifts, entertainment, and favors.

(a) *Acceptance prohibited.* Except as provided in paragraphs (b), (c), and (d) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the employee's agency;

(2) Conducts operations or activities that are regulated by the employee's agency;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty; or

(4) Appears to be offering the gift with the hope or expectation of obtaining advantage or preferment in dealing with the U.S. Government for any purpose.

(b) *Acceptance permitted.* The provisions of paragraph (a) of this section do not apply to:

(1) Gifts, gratuities, favors, entertainments, loans, or any other thing of monetary value received on account of close family or personal relationships when the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor;

(2) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(3) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(4) Acceptance of rates and discounts offered to employees as a class.

(c) *Acceptance permitted for State and ICA employees.* For State and ICA employees the provisions of paragraph (a) of this section do not apply to: Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(d) *Acceptance permitted for AID employees.* For AID employees the provisions of paragraph (a) of this section do not apply in the following situations:

(1) Acceptance of food, refreshments, or entertainment of nominal value on infrequent occasions offered in the ordinary course of luncheons, dinners, or other meetings and gatherings hosted by foreign governments or agencies and officials thereof, embas-

sies, and international organizations, where the primary purpose of the function is representational or social, rather than the transaction of business. Where the primary purpose of the function is the transaction of business, acceptance is not permitted, except if there is justification and reporting in accordance with paragraph (d)(4) of this section.

(2) Participation in widely attended lunches, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to Government and industry.

(3) Acceptance of food, refreshments, or entertainment in the unusual situation where the employee, by virtue of the location of the person, firm, corporation, or other entity, or the regulations governing its dining facilities, finds it inconvenient or impracticable not to accept the offer. Each case of acceptance shall be reported in accordance with the requirement of paragraph (d)(4) of this section. In no other case shall employees accept food, refreshments, or entertainment from private corporations, entities, firms, or individual contractors at occasions which are other than widely attended functions whose purposes are unrelated to Agency business.

(4) In exceptional circumstances where acceptance of food, refreshments, or entertainment is not authorized by paragraphs (d) (1), (2), and (3) of this section, but where, in the judgment of the individual concerned, the Government's interest would be served by such acceptance directly or indirectly from any foreign government, agency, or official thereof or a private person, firm, corporation, or other entity which is engaged or is endeavoring to engage in business transactions of any sort with AID, an employee may accept the offer: *Provided,* That a report of the circumstances, together with the employee's statement as to how the Government's interests were served, will be made within 48 hours to the employee's supervisor, or, if the employee is serving abroad, or on temporary duty abroad, to the Mission Director.

(e) *Gifts to superiors.* An employee shall for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than the employee (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(f) *Neither this section nor § 10.735-204* precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on the employee's behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

§ 10.735-203 Gifts from foreign governments.

An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated thereunder pursuant to E.O. 11320, 31 FR 15789. These regulations are set forth in Part 3 of this title (as added, 32 FR 6569, Apr. 28, 1967), and in 3 FAM 621.

§ 10.735-204 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in cir-

cumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for the employee's services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the employee's agency, or which draws substantially on official data or ideas which have not become part of the body of public information. Employees are referred to the detailed rules of their agency with respect to clearance and acceptance of compensation (3 FAM 628; for AID see Handbook 18).

(d) [Reserved]

(e) An employee shall not render any services, whether or not compensated, to any foreign government, state, province, or semigovernmental agency, or municipality of any foreign government, or to any international organization of states. However, this shall not prevent the rendering of such services by employees acting on behalf of the United States. Nor shall this provision prevent the rendering of services to an international organization of states when otherwise consistent with law and when authorized by the appropriate officer. The appropriate officer for State is the Director General and Director of Personnel; for AID the Assistant Administrator for Program and Management Services; and for ICA the Director of Personnel Services.

(f) [Reserved]

(g) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 10.735-205 Financial interests.

(a) An employee shall not: (1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with the employee's Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law or the regulations in this part.

(c) Pursuant to the provision of 18 U.S.C. 208(b) the following described financial interests of an employee are hereby exempted from the requirements of 18 U.S.C. 208(a) and 208(b)(1) as being too remote or too inconsequential to affect the integrity of the services of an employee. The exemption applies to the financial inter-

ests held directly by an employee, by the employee's spouse or minor child whether individually or jointly with the employee, or by an employee and any partner or partners as joint assets of the partnership:

(1) Investments in State and local government bonds; and stocks, bonds, or policies in a mutual fund, investment company, bank or insurance company, provided that in the case of a mutual fund, investment company, or bank, the fair value of such stock or bond holding does not exceed one percent of the value of the reported assets of the mutual fund, investment company, or bank. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company specializes in a particular industry or commodity.

(2) Interest in an investment club or other group organized for the purpose of investing in equity or debt securities: *Provided,* That the fair value of the interest involved does not exceed $10,000 and that the interest does not exceed one-fourth of the total assets of the investment club or group. Where an employee covered by this exemption is a member of a group organized for the purpose of investing in equity or debt securities, the interest of the employee in any enterprise in which the group holds securities shall be based upon the employee's equity share of the holdings of the group in that enterprise.

(3) If an employee, or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraphs (c)(1) and (2) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be equally exempt and to the same extent as under paragraphs (c)(1) and (2) of this section.

(4) If an employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt: *Provided,* The employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(5) An employee may continue to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed. Such financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit-sharing or stock-bonus plan and the employee's financial interest thereunder exceeds $10,000. This exemption extends also to any financial interests that the organization may have in other business activities.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which the employee has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of the employee's official responsibility, as defined in 18 U.S.C. 202(b): *Provided,* The head of the employee's division approves in writing.

§ 10.735-206 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging

in the activities listed below in any foreign country.

(1) Speculation in currency exchange.

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency.

(3) Sales to unauthorized persons (whether at cost or for profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements.

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch.

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control.

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments.

(7) Acting as a intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States.

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which the employee is assigned or detailed in the employee's own name or through the agency of any other person; exceptions may be made with respect to chiefs of mission only in writing by the Deputy Under Secretary for Management and for all other State employees by the appropriate chief of mission; for AID employees by the assistant administrator of the regional bureau or head of the nonregional organization, as appropriate; and for ICA employees by the Director of Personnel Services, or their designees (see 22 U.S.C. 805).

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in the employee's country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this paragraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares or stocks of commercial concerns headquartered in the country of assignment or conducting a substantial portion of their business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail when approved in writing by the appropriate official named in paragraph (b)(1) of this section. If retention is authorized, such stocks, shares, or bonds may not be sold while the employee is assigned or detailed to the country or countries, unless the agency approved the sale in writing.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits to the employee which result primarily from import privileges derived from the employee's official status as an employee of the U.S. Government. Employees of State and ICA are referred to Foreign Affairs Manual Circular 378; for AID see Handbook 23, Attachment 1B.

(c) *Acceptance of employment by members of family abroad.* Family members of Foreign Service personnel may accept gainful employment in a foreign country unless such employment (1) would violate any law of such country or of the U.S.; or (2) could damage the interests of the U.S., as certified in writing to the family member by the Chief of the U.S. Diplomatic Mission in such country. A copy of such certification will be sent to the Family Liaison Office (M/FLO), Department of State. Family members accepting employment abroad should bear in mind that they may not enjoy immunity from judicial process and would be subject to the payment to taxes derived from their nondiplomatic employment.

(d) *Business activities of non-U.S. citizen employees.* A non-U.S citizen employee abroad may engage in outside business activities with the prior approval of the head of the overseas establishment on the basis of the standards expressed in § 10.735-204(a).

§ 10.735-207 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 10.735-208 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 10.735-204(c) directly or indirectly use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

§ 10.735-209 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as Federal, State, or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 10.735-210 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 10.735-211 Activities relating to private organizations and politics.

(a) *Definition.* For the purpose of this section, the term "private organization" denotes any group of persons or associations organized for any purpose whatever, except an organization established by the Government of the United States, or officially participated in by State, AID, or ICA.

(b) *Participation in activities of employee organizations.* An employee may join or refrain from joining employee organizations or associations without interference, coercion, restraint, or fear of discrimination or reprisal.

(c) *Participation in activities of private organizations.* In participating in the program and activities of any private organization, an employee shall make clear that the employee's agency has no official connection with such organization and does not necessarily sponsor or sanction the viewpoints which it may express.

(d) *Legal restrictions on membership in certain organizations.* An employee shall not have membership in any organization that advocates the overthrow of our constitutional form of Government in the United States, knowing that such organization so advocates (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) *Private organizations concerned with foreign policy or other matters of concern to agencies.* (1) Limitation on participation. When a private organization is concerned primarily with foreign policy or international relations or other matters of concern to an employee's agency, an employee shall limit connection therewith as follows: Unless specifically permitted to do so, the employee may not serve as advisor, officer, director, teacher, sponsor, committee chairman, or in any other official capacity or permit the employee's name to be used on a letterhead, in a publication, in an announcement or news story, or at a public meeting, regardless of whether the employee's official title or connection is mentioned. The provisions of this section

are not intended to prohibit the normal and active participation of an employee in professional organizations such as the American Political Science Association, the American Economic Association, the American Foreign Service Association, and similar organizations, since such participation is in the interest of both the employee and the Government. Employees are expected, however, to exercise discretion in such activities and are held personally accountable for any improper use of their relationship with State, AID, and ICA.

(2) Request for special permission. Special permission to assume or continue a connection prohibited by paragraph (e)(1) of this section may be granted in cases where the public interest will not be adversely affected. To request such permission, or to determine whether the provisions are applicable to a particular case, the employee shall address a memorandum setting forth all of the circumstances to the appropriate officer. The appropriate officer is for State, the Director General and Director of Personnel; for AID, the Senior Personnel Officer under whose jurisdiction the employee serves; and for ICA, the Director of Personnel Services.

(3) Application to senior officers. Because of the prominence resulting from their official positions, chiefs of mission and other senior officers should recognize the particular bearing of the provisions of paragraph (e)(1) of this section upon their activities. They should restrict association with any organizations involving foreign nations and the United States to simple membership and should not accept even honorary office in such organizations except with the specific prior approval as provided in paragraph (e)(2) of this section.

(f) *Private organizations not concerned with foreign policy.* When the purpose and program of the organization do not fall primarily within the field of foreign policy or international relations, the employee's activity is limited only to the following extent:

(1) The employee's official title or connection may be used to identify the employee, as in a civic association election, but may not be used on a letterhead, in a publication, or otherwise so as to employ the prestige of the U.S. Government to enhance that of the organization or to imply official sponsorship.

(2) When the employee is a representative of an association consisting of State, AID, or ICA employees, or of a group of such employees, the employee's connection with the agency may be freely used so long as there is no implication of official sponsorship beyond that which may have been officially approved.

(g) *Political activities abroad.* A U.S. citizen employee shall not engage in any form of political activity in any foreign country.

(h) *Activities relating to U.S. politics.* The law (5 U.S.C. 7324, formerly the Hatch Act) provides in summary that it is unlawful for any Federal employee of the executive branch to use the employee's official authority or influence for the purpose of interfering with an election or affecting the result thereof, or to take any active part in political management or in political campaigns. These restrictions do not in any way affect the right of a Federal employee (1) to vote as the employee chooses; (2) to express personal political opinions, except as part of a campaign; (3) to make or refrain from making contributions to political organizations, provided contributions are not made in a Federal building or to another Federal officer or employee (see 18 U.S.C. 602, 603, 607, and 608); (4) to participate in local, nonpartisan activities.

§ 10.735-212 Wearing of uniforms.

(a) An employee of the Foreign Service may not wear any uniform except as may be authorized by law or as a military commander may require civilians to wear in a theater of military operations (22 U.S.C. 803). When an employee is authorized by law or required by a military commander of the United States to wear a uniform, care shall be taken that the uniform is worn only at authorized times and for authorized purposes.

(b) Conventional attire worn by chauffeurs, elevator operators, and other miscellaneous employees are not

considered uniforms within the meaning of this section except that, for ICA, MOA VII 917.2b prohibits the purchase from Agency funds of uniforms or any item of personal wearing apparel other than special protective clothing.

§ 10.735-213 Recommendations for employment.

(a) *Making recommendations in official capacity.* In general, an employee shall not, in the employee's official capacity, make any recommendations in connection with the employment of persons unless the position concerned are with the Government of the United States and the recommendations are made in response to an inquiry from a Government official authorized to employ persons or to investigate applicants for employment. A principal officer in answer to a letter of inquiry from outside the U.S. Government concerning a former employee assigned to the post, may state the length of time the person was employed at the post and the fact that the former employee performed duties in a satisfactory manner, if such is the case. Also, an AID Mission Director may provide names of persons or firms from which a cooperating government may select an employee or firm to be used in some phase of the AID program.

(b) *Making personal recommendations.* An employee may make a personal recommendation in connection with the employment of any person, including present or former employees, their spouses and/or members of their families, except for employment in a position of trust or profit under the government of the country to which the employee is accredited or assigned (22 U.S.C. 806(b)): *Provided,* That the employee does not divulge any information concerning the person derived from official sources. When a letter of introduction or recommendation is written by an employee, precautionary measures should be taken to prevent its being construed as official correspondence and used by an unscrupulous individual to impress American or foreign officials. Accordingly, official stationery should not be used for this purpose. The letter may, however, show the recommending employee's status as an employee of the U. S. Government. Every personal letter of recommendation shall contain a statement clearly indicating that the letter constitutes a personal recommendation and is not to be construed as an official recommendation by the Government of the United States.

§ 10.735-214 Transmitting communications and gifts.

(a) *Correspondence.* In corresponding with anyone other than the proper official of the United States with regard to the public affairs of a foreign government, an employee shall use discretion and judgment to ensure that neither the United States nor the employee will be embarrassed or placed in a compromising position (22 U.S.C. 806(a)).

(b) *Communications.* An employee shall not act as an agent for the transmission of communications from private persons or organizations in foreign countries to the President or to Federal, State, or municipal officials in the United States. A chief of mission may, however, accept communications of this nature and forward them to the Department of State for such further action as may be appropriate, whenever the chief of mission determines it to be clearly in the public interest to do so.

(c) *Gifts.* An employee shall not act as an agent for the transmission of gifts from persons or organizations in foreign countries to the President or to Federal, State, or municipal officials of the United States. However, principal officers may, according to regulations prescribed by the President, accept, and forward to the Office of Protocol of the Department of State, gifts made to the United States or to any political subdivision thereof by the Government to which they are accredited or from which they hold exequaturs. Employees shall not, without the approval of the Secretary of State, transmit gifts from persons or organizations in the United States to heads or other officials of foreign states.

§ 10.735-215 General conduct prejudicial to the Government.

(a) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(b) An employee abroad is also obligated to obey the laws of the country in which the employee is present.

(c) An employee shall observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public.

§ 10.735-216 Miscellaneous statutory provisions.

Each employee shall become acquainted with each statute that relates to the employee's ethical and other conduct as an agency employee of and of the Government.

(a) The attention of employees is directed to the following statutory provisions:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).[1]

(5) The prohibitions against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (ii) the disclosure of confidential information (18 U.S.C. 1905).

(6) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(7) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(8) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(9) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(10) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(11) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(12) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(13) The prohibition against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of the employee's employment (18 U.S.C. 654).

(14) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(15) The prohibition against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(16) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(17) The prohibition against discrimination because of politics, race, religion, or color (22 U.S.C. 807).

(18) The prohibition against officers or employees accepting any honorarium in excess of $2,000 or honoraria aggregating more than $25,000 in any calendar year (sec. 112, Pub. L. 94-283, 90 Stat. 494 (2 U.S.C. 441i)).

(b) The attention of consular officers is directed to the following statutory provisions:

(1) The provisions relating to the duty to account for fees received (22 U.S.C. secs. 9, 812, 1194), liability for exaction of excessive fees (22 U.S.C. secs. 1182, 1189), and liability for failure to collect proper fees (222 U.S.C. 1190).

(2) The provisions relating to liability for failure to give bond and for embezzlement (22 U.S.C. 1179), liability for embezzlement of fees or effects of American citizens (22 U.S.C. 1198), and

[1]The Courts have stricken from the Code any prohibition against assertion of the right to strike on the basis that such an assertion is a protected right under the First Amendment to the Constitution.

liability for falsely certifying as to the ownership of property (22 U.S.C. 1200).

(3) The prohibition against profiting from dealings with discharged seamen (22 U.S.C. 1187).

(4) The provision relating to liability for failure to collect the wages of discharged seamen (46 U.S.C. 683).

§ 10.735-217 Requesting exceptions from certain statutory prohibitions.

(a) Any employee desiring a written advance determination that the prohibitions of 18 U.S.C. 208(a) do not apply will prepare a written request addressed to an appropriate agency official. For purposes of this section, the appropriate agency official is: The Deputy Under Secretary for Management for State, the Administrator for AID, and the Director for ICA. The request will describe the particular matter giving rise to the conflict of interest, the nature and extent of the employee's anticipated participation in the particular matter, and the exact nature and amount of the financial interest related to the particular matter.

(b) The employee will forward the request to the appropriate agency official through the immediate supervisor and the assistant agency head in charge of the organizational agency component to which the employee is assigned, or will be assigned in the case of a new employee. The assistant agency head will forward the written request to the appropriate agency official through the agency's Counselor. The Counselor shall attach a written opinion to the request, prepare a recommended written determination in final form for signature by the appropriate agency official, and shall forward all documents to that official.

(c) The determination of the appropriate agency official will be sent to the employee by the Counselor. If the appropriate agency official grants the requested exception, the original written advance determination will be sent to the employee. A duplicate original shall be retained among the appropriate agency records under the control of the Counselor.

Subpart C—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 10.735-301 Conflicts of interest.

Special Government employees are subject to the conflicts of interest statutes (18 U.S.C. 202). An explanation of these conflicts of interest statutes their effects upon special Government employees and guidelines for obtaining and utilizing the services of special Government employees are in Appendix C of Chapter 735 of the Federal Personnel Manual. A special Government employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with Government duties and responsibilities.

§ 10.735-302 Use of Government employment.

A special Government employee shall not use Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 10.735-303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of Government employment for private gain for the employee or another person either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, or writing that is not prohibited by law, Executive Order 11222 or the restrictions in this part; however, a special Government employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Govern-

ment employment, except when that information has been made available to the general public or will be made available, or when the head of the agency gives written authoritzation for the use of nonpublic information on the basis that the use is in the public interest. A special Government employee who wishes to request the agency head to authorize the use of nonpublic information should submit such request through the Counselor. The request should contain complete information concerning the nonpublic information which the employee wishes to disclose and should contain in addition an indication of the intended use of such information and how disclosure of it would be in the public interest.

§ 10.735-304 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 10.735-305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with Government employment, shall not receive or solicit from a person having business with the employee's agency anything of value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business or financial ties.

(b) The exceptions to the prohibition against the acceptance of gifts which have been granted to employees in § 10.735-202 (b), (c), and (d) are also applicable to special Government employees.

(c) A special Government employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated thereunder pursuant to E.O. 11320; 31 FR 15789. These regulations are set forth in Part 3 of this title (as added, 32 FR 6569, April 28, 1967), and in 3 FAM 621.

(d) A special Government employee shall avoid any action, whether or not specifically prohibited by these sections on special Government employees, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 10.735-306 Miscellaneous statutory provisions.

Each special Government employee shall become acquainted with each statute that relates to the employee's ethical and other conduct as a special Government employee of an agency and of the Government. The attention of special Government employees is directed to the statutes listed in § 10.735-216.

Subpart D—Statements of Employment and Financial Interests

§ 10.735-401 Employees required to submit statements.

The following employees of State, AID, and ICA shall submit statements of employment and financial interests:

(a) All special Government employees including experts or consultants serving on a full-time or intermittent basis, except when waived under § 10.735-402(c).

(b) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code, except as provided in § 10.735-402(b).

(c) Except as provided in § 10.735-402, employees classified at GS-13, FSO-4, FSR-5, FSS-2, AD-13, FC-5, or above, who are in positions hereby identified either as positions the basic

duties of which impose upon the incumbent the responsibility for a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise;

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise, or as positions which have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, Executive order, and the agency's regulations:

STATE

Director General of the Foreign Service and the Director of Personnel; Director of the Policy Planning Staff; Inspector General; Director, FSI; Special Assistant to Secretary; Deputy Secretary, Under Secretaries, or Deputy Under Secretary; Deputy Assistant Secretary and others at this level or above; Assistant Legal Adviser for Management; Director, Office of Operations; Office Director; Country Director; Division Chief in Bureau of Economic and Business Affairs, in the Office of Operations, (O/OPR), or in the Office of Foreign Buildings; Executive Director; Deputy Chief of Mission; Principal Officer; Economic Counselor; Commercial Counselor; Administrative Counselor; Civil Air Attache; Petroleum Officer; Minerals Officer; Contracting Specialist; Procurement Specialist; Despatch Agent; Traffic Manager; and Traffic Management Specialist.

ICA

Deputy Director, Associate Directors, Directors and Deputy Directors of Offices or Services, Executive or Special Assistants to the Director; Chief Inspector; Associate Chief Inspector; Commissioner General, Deputy Commissioner General, Staff Director (Advisory Commission), Director of Engineering and Technical Operations; Director of Audio-Visual Procurement and Production; Country Public Affairs Officer, Deputy Country Public Affairs Officer, Public Affairs Counselor, Deputy Public Affairs Counselor, Director or Manager of Regional Service Center, Radio Relay Station, Radio Program Center or Radio Relay Station Construction Site, Administrative Officer or Executive Officer at a post abroad, Administrative Officer, Executive Officer and Business Manager (occupational codes 301, 340, 341, and 1101, or FAS code 200); Contracting Specialist and Procurement Specialist (occupational code 1102, or FAS codes 210 and 211); Auditor and Accountant (occupational code 510, or FAS code 207); General Counsel, Deputy General Counsel, or Attorney (occupational code 905, or FAS code 512).

AID

(1) AID/W: Deputy Assistant Administrators, Associate Assistant Administrators, Deputy Associate Assistant Administrators; Heads and Deputy Heads of Offices, Staffs, and Divisions; Desk Officers and Deputy Desk Officers.

(2) Overseas: Mission Directors, Deputy Directors, Assistant Directors, AID Representatives, Aid Affairs Officers, Chairman, Development Assistance Committee; U.S. Representative to Development Assistance Committee; Development Coordination Officer.

(3) Any person serving as chief of an operational branch responsible for housing, loans, guarantees, or other commercial type transactions with the public.

(4) In addition, employees in AID/W or overseas whose positions fall within the following series or position titles (occupational code given in parenthesis): Economist Series (0110); International Cooperation Series (0136); Auditor General (0301.21); Supervisory Housing Development Officer (0301.31); Chief, Housing and Urban Development (0301.35); Contract Compliance Specialist (0301.48); Director for Regional Activities (0340.08); Development Officer (0340.09); Regional Development Officer (0340.10); Executive Officer (0341.01); Deputy Executive Officer (0341.02); Regional Executive Officer (0341.03); Administrative Officer (0341.05); Executive Officer—Administrative Support (0341.15); Executive Officer, Operations (0341.16); Executive Officer, Real Property (0341.18); Executive Officer, Personnel (0341.19); General Services Officer (0342.01); Assistant General Services Officer (0342.03); Assistant General Services Officer, Property and Supply (0342.20); Assistant General Services Officer, Procurement (0342.23); Assistant General Services Officer, Housing (0342.25); Program Officer (0345.01); Deputy Program Officer (0345.02); Food and Agriculture Officer (0401.01); Deputy Food and Agriculture Officer (0401.02); Budget and Accounting Series (0504); Financial Management Series (0505); Accounting Series (0510); Budget Administration Series (0560); General Attorney Series (0905); General Business and Industry Series (1101); Contract and Procurement Series (1102); Property Disposal Series (1104); Purchasing Series (1105); Trade Specialist Series (1140); Private Resources Development Series (1150); Financial Analysis

Series (1160); General Investigating Series (1810); Criminal Investigating Series (1811); Import Specialist Series (1889); General Supply Series (2001); Supply Program Management Series (2003).

§ 10.735-402 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (c) of § 10.735-401 may be excluded from the reporting requirement when the agency head or designee determines that:

(1) The duties of the position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of the position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by the regulations in this part from an agency head, or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of Exective Order 11222.

(c) Special Government employees not required to submit statements. An agency head may waive the requirement of this section for the submission of a statement of employment and financial interest in the case of a special Government employee who is not a consultant or an expert when the agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.

§ 10.735-403 Employee's complaint on filing requirement.

Each employee shall have the opportunity for review through agency grievance procedure of the employee's complaint that the employee's position has been improperly included within § 10.735-401 as one requiring the submission of a statement of employment and financial interests. Employees are reminded that they may obtain counseling pursuant to § 10.735-103 prior to filing a complaint.

§ 10.735-404 Time and place of submission, and forms.

(a) An employee or special Government employee shall submit a statement to the Counselor (in the case of a State employee, through the employee's Bureau) no later than:

(1) Ninety days after the effective date of this part if the employee has entered on duty on or before that effective date; or

(2) At least 10 days prior to entrance on duty, if the employee enters on duty after that effective date; except that an employee or special Government employee who enters on duty within 90 days of the effective date of this part may submit such statement within 90 days after entrance on duty.

(b) Only the original of the statement or supplement thereto required by this part shall be submitted. The individual submitting a statement should retain a copy for the individual's own records.

§ 10.735-405 Information required.

(a) *Employees.* Employees' statement of employment and financial interests required by the regulations in this part shall be submitted on the form, "Confidential Statement of Employment and Financial Interests (for use by Government Employees)", Form OF-106, and shall contain all the information therein required.

(b) *Special Government employees.* All special Government employees shall submit statements of employment and financial interest on the form, "Confidential Statement of Employment and Financial Interests (for use by Special Government Employ-

ees)", Form OF-107 for State and ICA, Form AID 4-450 for AID, and shall contain all the information therein required.

(c) *Interests of employee's relatives.* The interest of a member of an employee's family is considered to be an interest of the employee. The term "member of an employee's family" is defined in § 10.735-102(f).

(d) *Information not known by employees.* If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employee's behalf.

(e) *Interests not required to be reported.* An employee need not disclose those financial interests described in § 10.735-205(c) as being too remote or too inconsequential to affect the integrity of employees' services.

(f) *Information not required.* The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 10.735-406 Submission of position description.

Each Statement of Employment and Financial Interests or annual supplement thereto must be accompanied by a full description of the employee's principal governmental duties. The description should be particularly detailed in regard to those duties which might possibly be an element in a conflict of interest. If the statement indicates that the employee has no outside employment or financial interests, the employee need not submit a description of duties. For a special Government employee, the employing office shall submit the description.

§ 10.735-407 Supplementary statements.

(a) Employees, as defined in paragraphs (b) and (c) of § 10.735-401, shall report changes in, or additions to, the information contained in their statements of employment and financial interests in supplementary statements as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) All special Government employees, as defined in paragraph (a) of § 10.735-401, shall submit a current statement at the time their appointments are extended. A supplementary report indicating any changes in, or additions to the information already submitted will be accepted in lieu of a full submission. If there are no changes or additions, a negative report is required. For AID, no action to extend an appointment will be taken unless such supplementary report is submitted not later than 10 days prior to the expiration of said appointment.

(c) Notwithstanding the filing of reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

(d) An employee is also to keep current the employee's description of principal duties as to changes or additions which might possibly be an element in a conflict of interest. The employing office shall submit descriptions of changes in the principal duties of a special Government employee as they occur.

§ 10.735.408 Review of statements and determination as to conflicts of interest.

(a) On the basis of the Statement of Employment and Financial Interests submitted by each employee or special Government employee, or on the basis of information received from other

sources, the Counselor shall determine, in the light of the duties which that employee or special Government employee is or will be performing, whether any conflicts of interest, real or apparent, are indicated. The Counselor shall make this determination based on the applicable statutes, the Executive order, and the applicable regulations of the Civil Service Commission, and of the agency.

(b) Where the Counselor's determination in a particular case is that a conflict of interest, real or apparent, is indicated, the Counselor shall initiate informal discussions with the employee or special Government employee concerned. These discussions shall have as their objectives:

(1) Providing the individual with a full opportunity to explain the conflict or appearance of conflict; and

(2) Arriving at an agreement (acceptable to the Counselor, the individual and the individual's immediate superior) whereby the conflict of interest may be removed or avoided. Such an agreement may include, but is not limited to: (i) Changes in assigned duties; (ii) divestiture of the financial or employment interest creating the conflict or apparent conflict; or (iii) disqualification for a particular assignment.

(c) Where an acceptable agreement cannot be obtained pursuant to paragraph (b) of this section, the Counselor shall present findings and recommendations to the officer designated by the agency head, who shall decide which remedy is most appropriate to remove or correct that conflict or apparent conflict. Remedial action under this paragraph may include disciplinary action, including separation for cause, or any of the actions enumerated in paragraph (b)(2) of this section and shall be effective in accordance with applicable laws, Executive orders, and regulations.

(d) Written summaries of all agreements and decisions arrived at pursuant to paragraph (b) or (c) of this section shall be placed in the Counselor's files. Copies shall also be made available to the employee or special Government employee concerned.

§ 10.735-409 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselors are authorized to review and retain the statements. The Counselor and Deputy Counselors are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

§ 10.735-410 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee or the other person's participation is prohibited by law, order, or regulation. Save with respect to those financial interests excepted from the conflict of interest prohibitions of 18 U.S.C. 208(a) pursuant to a written advance determination under § 10.735-217 or exempted by the provisions of § 10.735-205(c), an employee must disqualify himself or herself from participating in any matter in which the employee has a financial interest.

§ 10.735-411 Disqualification procedures.

(a) Where an employee is prohibited from participating in a matter because of a conflicting financial interest that is not exempt under § 10.735-205(c) or has not been specifically excepted by the appropriate agency official pursuant to § 10.735-217 in advance of the employee's participation in the particular matter, the employee shall con-

duct himself or herself in accordance with the following provisions:

(1) The employee shall promptly disclose the financial interest in such matter to the employee's immediate superior. The superior will thereupon relieve the employee of duty and responsibility in the matter.

(2) In foreign posts, it may be impossible or highly impracticable for an employee, who has a disqualifying financial interest, to assign the matter for official action to anyone other than a subordinate. In this event, the employee must instruct the subordinate to report fully and directly to the immediate superior to whom the employee himself or herself would normally report. The employee must concurrently direct such subordinate to take such action as may be appropriate in the matter, and without thereafter revealing to the disqualified employee in any way any aspect of the particular matter.

(b) Nothing herein precludes the employee from disposing of such disqualifying financial interest, thereby wholly eliminating the conflict of interest. In some circumstances, where the employee may not obtain an exception under § 10.735-217, or may not disqualify himself or herself and refer or assign the matter to another employee, the performance of duty may even require divestiture.

(c) Where a supervisor has reason to believe that a subordinate employee may have a conflicting financial interest, the supervisor should discuss the matter with the employee. If the supervisor finds that a conflict of interest does exist, the supervisor must relieve the subordinate employee of duty and responsibility in the particular matter.

(d) The obligation to avoid conflicts of interest is upon each employee. It is a continuing obligation calling for alert vigilance.

(e) Notwithstanding any other provision of this part to the contrary, if a employee's holdings rise in value above the amount exempted by § 10.735-205(c), then the statutory and regulation prohibitions apply in a conflict of interest situation.

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

Sec.
11.1 Eligibility for appointment as Foreign Service officer.
11.2 Written examination for appointment to class 7 or 8.
11.3 Oral examination for appointment to class 7 or 8.
11.4 Medical examination for appointment to class 7 or 8.
11.5 Certification for appointment to class 7 or 8.
11.6 Final review panel.
11.7 Termination of eligibility.
11.8 Travel expenses of candidates.
11.11 Lateral entry appointments of Foreign Service officers to classes 1 through 7.

AUTHORITY: Secs. 212, 302, 303, 516, 517, 60 Stat. 1001, as amended, 1002, 1008, as amended; 22 U.S.C. 827, 842, 843, 911, unless otherwise noted.

§ 11.1 Eligibility for appointment as Foreign Service officer.

(a) *General considerations.* Pursuant to Section 511 of the Foreign Service Act of 1946, as amended, all Foreign Service officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service officer unless that person has demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution, is a citizen of the United States, and, if married, is married to a citizen of the United States. The religion, race, sex, marital status, or political affiliations of a candidate will not be considered in designations, examinations, or certifications.

(b) *Veterans' preference.* Notwithstanding the provisions of section 3320 of Title 5 of the United States Code, the fact that any applicant is a veteran or disabled veteran, as defined in Section 2108 (1) or (2) of such title, shall be taken into consideration as an affirmative factor in the selection of applicants for initial appointment as Foreign Service officers or Foreign Service information officers. (22 U.S.C. 1234.)

ATTACHMENT 2D

22 Code of Federal Regulations

(These regulations are codified in 3 FAM 321, Gifts and Decorations from Foreign Governments, unified State/IDCA/AID/USIA regulations.)

PART 3—GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS

Sec.

3.1 Purpose.
3.2 Authority.
3.3 Definitions.
3.4 Restriction on acceptance of gifts and decorations.
3.5 Designation of officials and offices responsible for administration of foreign gifts and decorations.
3.6 Procedure to be followed by employees in depositing gifts of more than minimal value and reporting acceptance of travel or travel expenses.
3.7 Decorations.
3.8 Approval of retention of gifts or decorations with employing agency for official use.
3.9 Disposal of gifts and decorations which become the property of the United States.
3.10 Enforcement.
3.11 Responsibility of chief of mission to inform host government of restrictions on employees' receipt of gifts and decorations.
3.12 Exemption of grants and other foreign government assistance in cultural exchange programs from coverage of foreign gifts and decorations legislation.

AUTHORITY: Sec. 515(a)(1), 91 Stat. 862, amending 5 U.S.C. 7342 (1976).

SOURCE: Dept. Reg. 108.798, 45 FR 80819, Dec. 8, 1980, unless otherwise noted.

§ 3.1 Purpose.

These regulations provide basic standards for employees of the Department of State, the United States International Development Cooperation Agency (IDCA), the Agency for International Development (AID), and the International Communication Agency (USICA), their spouses (unless separated) and their dependents to accept and retain gifts and decorations from foreign governments.

§ 3.2 Authority.

(a) Section 515(a)(1) of the Foreign Relations Authorization Act of 1978 (91 Stat. 862-866), approved August 17, 1977, (hereafter referred to as "the Act") amended Section 7342 of Title 5, U.S. Code (1976), making substantial changes in the law relating to the acceptance and retention of gifts and decorations from foreign governments.

(b) 5 U.S.C. 7342(g) authorizes each employing agency to prescribe regulations as necessary to carry out the new law.

§ 3.3 Definitions.

When used in this part, the following terms have the meanings indicated:

(a) *"Employee"* means (1) an officer or employee of the Department, AID, IDCA, or USICA, including an expert or consultant, however appointed, and (2) a spouse (unless separated) or a dependent of such a person, as defined in section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152).

(b) *"Foreign government"* means: (1) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government; (2) any international or multinational organization whose membership is composed of any unit of foreign government as described in subsection (b)(1) of this section; (3) any agent or representative of any such unit or organization, while acting as such;

(c) *"Gift"* means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(d) *"Decoration"* means an order, device, medal, badge, insignia, emblem

or award tendered by, or received from, a foreign government;

(e) *"Minimal value"* means retail value in the United States at the time of acceptance of $100 or less, except that on January 1, 1981, and at 3-year intervals thereafter, "minimal value" is to be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

§ 3.4 Restriction on acceptance of gifts and decorations.

(a) An employee is prohibited from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government. An employee is also prohibited from accepting a gift or decoration from a foreign government, except in accordance with these regulations.

(b) An employee may accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy, subject, however, to the following restrictions—

(1) Where more than one tangible item is included in a single presentation, the entire presentation shall be considered as one gift, and the aggregate value of all items taken together must not exceed "minimal value".

(2) the donee is responsible for determining that a gift is of minimal value in the United States at the time of acceptance. However, should any dispute result from a difference of opinion concerning the value of a gift, the employing agency will secure the services of an outside appraiser to establish whether the gift is one of "minimal value". If, after an appraisal has been made, it is established that the value of the gift in question is $200 or more at retail in the United States, the donee will bear the costs of the appraisal. If, however, the appraised value is established to be less than $200, the employing agency will bear the costs.

(c) An employee may accept a gift of more than minimal value when (1) such gift is in the nature of an educational scholarship or medical treatment, or (2) it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States.

(d) An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency. Except where the employing agency has specific interests which may be favorably affected by employee travel wholly outside the United States, even though it would not normally authorize its employees to engage in such travel, the standards normally applied to determine when proposed travel will be in the best interests of the employing agency and of the United States Government shall be applied in approving acceptance of travel or travel expenses offered by a foreign government.

(1) There are two circumstances under which employees may accept gifts of travel or expenses:

(i) When the employee is issued official travel orders placing him or her in the position of accepting travel or travel expenses offered by a foreign government which are directly related to the authorized purpose of the travel; or

(ii) When the employee's travel orders specifically anticipate the acceptance of additional travel and travel expenses incident to the authorized travel.

(2) When an employee is traveling under circumstances described in paragraph (d)(1)(i) of this section, that is, without specific instructions authorizing acceptance of additional travel expenses from a foreign government, the employee must file a report with the employing angency under the procedures prescribed in § 3.6.

(e) Since tangible gifts of more than minimal value may not lawfully become the personal property of the donee, all supervisory officials shall, in advising employees of their responsi-

bilities under the regulations, impress upon them their obligation to decline acceptance of such gifts, whenever possible, at the time they are offered, or to return them if they have been sent or delivered without a prior offer. All practical measures, such as periodic briefings, shall be taken to minimize the number of gifts which employees must deposit and which thus become subject to disposal as provided by law and regulation. Employees should not accept gifts of more than minimal value on the assumption that refusal would be likely to "cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States". In many instances it should be possible, by explanation of the prohibition against an employee's retention of such gifts, to avoid consequences of acceptance, including possible return of the gift to the donor. Refusal of the gift at the inception should typically be regarded as in the interest both of the foreign government donor and the U.S. Government.

§ 3.5 Designation of officials and offices responsible for administration of foreign gifts and decorations.

(a) The Act effects a significant degree of decentralization of administration relative to the disposal of foreign gifts and decorations which become U.S. Government property. Each agency is now responsible for receiving from its employees deposits of foreign gifts of more than minimal value, as well as of foreign decorations not meeting the statutory criteria for retention by the recipient. The agency is also responsible for disposing of this property by return to the donor, for retaining it in the agency if official use of it is approved, for reporting to the General Services Administration within 30 calendar days after deposit items neither disposed of nor retained, and for assuming custody, proper care and handling of such property pending removal from that custody pursuant to disposal arrangements by the General Services Administration. The Secretary of State, however, is made responsible for providing guidance to other executive agencies in the development of their own regulations to implement the Act, as well as for the annual publication of lists of all gifts of more than minimal value deposited by Federal employees during the preceding year. [See § 3.5(c).] Authority for the discharge of the Secretary's responsibilities is delegated by these regulations to the Chief of Protocol.

(b) The Office of the Chief of Protocol retains primary responsibility for administration of the Act within the Department of State. That Office will, however, serve as the depository only for those foreign gifts and decorations which are turned in by State Department employees. The Director of Personnel Services of the USICA will have responsibility for administration of the Act within that agency and will serve as the depository of foreign gifts and decorations. Employees of the other foreign affairs agencies must deposit with their respective agencies any gifts or decorations deposit of which is required by law.

(c) Any questions concerning the implementation of these regulations or interpretation of the law should be directed to the following:

(1) For the Department of State, to the Office of Protocol or to the Office of the Assistant Legal Adviser for Management, as appropriate;

(2) For IDCA, to the Office of the General Counsel;

(3) For AID, to the Assistant General Counsel for Employee and Public Affairs; and

(4) For USICA, to the General Counsel.

§ 3.6 Procedure to be followed by employees in depositing gifts of more than minimal value and reporting acceptance of travel or travel expenses.

(a) An employee who has accepted a tangible gift of more than minimal value shall, within 60 days after acceptance, relinquish it to the designated depository office for the employing agency for disposal or, with the approval of that office, deposit it for official use at a designated location in the employing agency or at a specified Foreign Service post. The designated depository offices are:

(1) For the Department of State, the Office of Protocol;

(2) For IDCA, the General Services Division of the Office of Management Planning in AID;

(3) For AID, the General Services Division of the Office of Management Planning; and

(4) For USICA, the Office of Personnel Services.

(b) At the time that an employee deposits gifts of more than minimal value for disposal or for official use pursuant to paragraph (a) of this section, or within 30 days after accepting a gift of travel or travel expenses as provided in § 3.4(d) (unless the gift of such travel or travel expenses has been accepted in accordance with specific instructions from the Department or agency), the employee shall file a statement with the designated depository office with the following information:

(1) For each tangible gift reported:

(i) The name and position of the employee;

(ii) A brief description of the gift and the circumstances justifying acceptance;

(iii) The identity of the foreign government and the name and position of the individual who presented the gift;

(iv) The date of acceptance of the gift;

(v) The donee's best estimate in specific dollar terms of the value of the gift in the United States at the time of acceptance; and

(vi) Disposition or current location of the gift. (For State Department employees, forms for this purpose are available in the Office of Protocol.)

(2) For each gift of travel or travel expenses:

(i) The name and position of the employee;

(ii) A brief description of the gift and the circumstances justifying acceptance; and

(iii) The identity of the foregign government and the name and position of the individual who presented the gift.

(c) The information contained in the statements called for in paragraph (b) of this section is needed to comply with the statutory requirement that, not later than Janaury 31 of each year, the Secretary of State publish in the FEDERAL REGISTER a comprehensive listing of all such statements filed by Federal employees concerning gifts of more than minimal value received by them during the preceding year.

§ 3.7 Decorations.

(a) Decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance may be accepted, retained, and worn by an employee, subject to the approval of the employing agency. Without such approval, the decoration is deemed to have been accepted on behalf of the United States and, like tangible gifts of more than minimal value, must be deposited by the employee with the designated depository office for the employing agency within sixty days after acceptance, for retention for official use or for disposal in accordance with § 3.9.

(b) The decision as to whether a decoration has been awarded for outstanding or unusually meritorious performance will be made:

(1) For the Department of State, by the supervising Assistant Secretary of State or comparable official, except that, in the case of a decoration awarded to an Assistant Secretary or other officer of comparable or higher rank, the decision shall be made by the Office of Protocol;

(2) For IDCA, by the Assistant Director for Administration;

(3) For AID, by the Director of Personnel Management; and

(4) For USICA, by the Supervising Associate Director, the General Counsel, or the Director of the Office of Congressional and Public Liaison (for domestic employees), and by the Director of Area Offices (for overseas employees).

(c) To justify an affirmative decision, a statement from the foreign government, preferably in the form of a citation which shows the specific basis for the tender of the award, should be supplied. An employee who has received or been tendered a decoration should forward to the designated depository office of the employing agency a request for review of the case. This request should contain a statement of circumstances of the award and such documentation from

the foreign government as has accompanied it. The depository office will obtain the decision of the cognizant office as to whether the award meets the statutory criteria and thus whether the decoration may be retained and worn. Pending receipt of that decision, the decoration should remain in the custody of the recipient.

§ 3.8 Approval of retention of gifts or decorations with employing agency for official use.

(a) At the request of an overseas post or an office within the employing agency, a gift or decoration deemed to have been accepted on behalf of the United States may be retained for official use. Such retention should be approved:

(1) For the Department of State, by the Chief of Protocol;

(2) For IDCA, by AID's Director of Management Operations;

(3) For AID, by the Director of Management Operations; and

(4) For USICA, by the Associate Director for Management.

However, to qualify for such approval, the gift or decoration should be an item which can be used in the normal conduct of agency business, such as a rug or a tea service, or an art object meriting display, such as a painting or sculpture. Personal gift items, such as wristwatches, jewelry, or wearing apparel, should not be regarded as suitable for "official use". Only under unusual circumstances will retention of a decoration for official use be authorized. Every effort should be made to place each "official use" item in a location that will afford the largest number of employees, and, if feasible, members of the public, the maximum opportunity to receive the benefit of its display, provided the security of the location is adequate.

(b) Items approved for official use must be accounted for and safeguarded as Federal property at all times under standard Federal property management procedures. Within 30 days after the official use of a gift has been terminated, the gift or decoration shall be deposited with the designated depository office of the employing agency to be held pending completion of disposal arrangements by the General Services Administration.

§ 3.9 Disposal of gifts and decorations which become the property of the United States.

(a) Gifts and decorations which have been reported to an employing agency shall either be returned to the donor or kept in safe storage pending receipt of instructions from the General Services Administration for transfer, donation or other disposal under the provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and the Federal Property Management Regulations (41 CFR Part 101-49). The employing agency shall examine each gift or decoration and the circumstances surrounding its donation and assess whether any adverse effect upon the foreign relations of the United States might result from a return of the gift (or decoration) to the donor, which shall be the preferred means of disposal. If this is not deemed feasible, the employing agency is required by GSA regulations to report deposit of the gift or decoration within 30 calendar days, using Standard Form 120, Report of Excess Personal Property and, as necessary, Standard Form 120A, Continuation Sheet, and citing Section 7342 of Title 5, U.S. Code (1976), on the reporting document. Such reports shall be submitted to the General Services Administration, Washington National Capital Region (WDPO), Attention: Federal Property Resources Service, Seventh and D Streets, S.W., Washington, D.C. 20407.

(b) No gift or decoration deposited with the General Services Administration for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. When depositing gifts or decorations with the designated depository office of their employing agency, employees may indicate their interest in participating in any subsequent sale of the items by the Government. Before gifts and decorations may be considered for sale by the General Services Administration, however, they must first have

been offered for transfer to Federal agencies and for donation to the States. Consequently, employees should understand that there is no assurance that an item will be offered for sale, or, if so offered, that it will be feasible for an employee to participate in the sale. Employees are reminded in this connection that the primary aim of the Act is to discourage employees' acceptance of gifts of more than minimal value.

§ 3.10 Enforcement.

(a) Each employing agency is responsible under the Act for reporting to the Attorney General cases in which there is reason to believe that one of its employees has violated the Act. The Attorney General in turn may file a civil action in any United States District Court against any Federal employee who has knowingly solicited or accepted a gift from a foreign government in violation of the Act, or who has failed to deposit or report such gift, as an Act required by the Act. In such case, the court may assess a maximum penality of the retail value of a gift improperly solicited or received, plus $5,000.

(b) Supervisory officials at all levels within employing agencies shall be responsible for providing periodic reorientation of all employees under their supervision on the basic features of the Act and these regulations, and for ensuring that those employees observe the requirements for timely reporting and deposit of any gifts of more than minimal value they may have accepted.

(c) Employees are advised of the following actions which may result from failure to comply with the requirements of the Act and these regulations:

(1) Any supervisor who has substantial reason to believe that an employee under his or her supervision has violated the reporting or other compliance provisions of the Act shall report the facts and circumstances in writing to the senior official in charge of administration within the cognizant bureau or office or at the post abroad. If that official upon investigation decides that an employee who is the donee of a gift or is the recipient of travel or travel expenses has, through actions within the employee's control, failed to comply with the procedures established by the Act and these regulations, the case shall be referred to the Attorney General for appropriate action.

(2) In cases of confirmed evidence of a violation, whether or not such violation results in the taking of action by the Attorney General, the senior administrative official referred to in § 3.10(c)(1) as responsible for forwarding a violation report to the Attorney General shall institute appropriate disciplinary action against an employee who has failed to (i) Deposit tangible gifts within 60 days after acceptance, (ii) account properly for the acceptance of travel expenses or (iii) comply with the Act's requirements respecting disposal of gifts and decorations retained for official use.

(3) In cases where there is confirmed evidence of a violation, but no evidence that the violation was willful on the part of the employee, the senior administrative official referred to in § 3.10(c)(1) shall institute appropriate disciplinary action of a lesser degree than that called for in § 3.10(c)(2) in order to deter future violations by the same or another employee.

§ 3.11 Responsibility of chief of mission to inform host government of restrictions on employees' receipt of gifts and decorations.

A special provision of the Act requires the President to direct every chief of a United States diplomatic mission to inform the host government that it is a general policy of the United States Government to prohibit its employees from receiving gifts of more than minimal value or decorations that have not been tendered "in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance." Accordingly, all Chiefs of Mission shall in January of each year conduct a thorough and explicit program of orientation aimed at appropriate officials of the host government concerning the operation of the Act.

Chapter I—Department of State

§ 3.12 Exemption of grants and other foreign government assistance in cultural exchange programs from coverage of foreign gifts and decorations legislation.

The Act specifically excludes from its application grants and other forms of assistance "to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies". See 22 U.S.C. 2558 (a) and (b) for the terms and conditions under which Congress consents to the acceptance by a Federal employee of grants and other forms of assistance provided by a foreign government to facilitate the participation of such employee in a cultural exchange.

628 SPEAKING, WRITING, AND TEACHING

(TL:PER-259 3-27-69)>HR> (Uniform State/AID/USIA)

628.1 Applicability

The provisions of this section apply to all employees, including foreign nationals, of State, AID, and USIA, in the United States and abroad, with respect to:

a. Clearance of writings; and

b. Clearance of engagements to speak, lecture, teach, or participate in conferences.

Certain employees are assigned to duties which require making speeches, holding interviews, or otherwise engaging in discussions on a variety of topics. The following provisions are not intended to interfere with the normal performance of these duties or to require clearance for any such activities carried out within established policy guidelines, except as may be dictated by the exercise of prudence and good judgment.

628.2 General Policy and Procedures

a. The foreign affairs agencies encourage participation by their employees in activities of a responsible and nonpartisan character devoted to increasing public study or understanding of the nation's foreign relations and of the work of the agencies. Such activities may be performed in an official or private capacity, but, until shown to be otherwise, it will be presumed for the purpose of determining when compensation may be received that all speaking or writing by an employee which concerns the current responsibilities, programs, or operations of the employee's agency is done in an official capacity. All speaking, writing, and teaching materials which may reasonably be interpreted as relating to the current responsibilities, programs, or operations of any employee's agency or to current U.S. foreign policies, or which reasonably may be expected to affect the foreign relations of the United States are of official concern and shall be submitted, as provided in the following pertinent sections, for clearance by the employee's agency, whether the employee is acting officially or privately.

b. No employee shall publish any material of official concern under paragraph a until it has been cleared. The purpose of this clearance requirement is to substitute the agency's institutional judgment for the employee's judgment when the question involved concerns either the release or accuracy of information concerning the employee's agency's responsibilities or what conclusions should be drawn from such information. Accordingly, clearance is not required to reprint or republish in other form material that has been cleared at an earlier date.

c. Clearance will not be granted until all classified material and all material of official concern under paragraph a which is inaccurate, inconsistent with current foreign policy, or can reasonably be expected to affect adversely U.S. foreign relations, has been deleted from the proposed speaking, writing, or teaching material.

d. The foreign affairs agencies will adopt interagency procedures to assure review of and guidance on material of official concern in their primary fields of responsibility.

628.3 Speeches and Interviews

628.3-1 Speaking in the United States

a. All invitations to speak, lecture, or participate in conferences in the United States, during the course of official duty, on a subject of official concern under section 628.2, shall be referred for acceptance to the appropriate office in the employee's agency. The appropriate office in State, is the Bureau of Public Affairs; in AID, the Information Staff; and in USIA, the Office of Public Information.

b. The text or outline of each speech or lecture by an employee of the rank of office director or above in State and AID, and of Assistant Director, General Counsel, and Inspector General in USIA, of official concern under section 628.2, shall be submitted for preliminary clearance to the office within that employee's agency concerned with the subject matter of the speech or lecture and then for final clearance by the appropriate office in the agency as specified in paragraph a. A subordinate officer shall submit the text of such a speech or lecture to own office director or official of comparable rank if the officer is in State or AID, or to own office or service head if the officer is in USIA, who may either disapprove the text or approve it and refer it for further review by the offices concerned with the subject matter of the speech or lecture and by the appropriate office named in paragraph a.

c. In informal presentations, professional meetings, conferences, and panel discussions where, because of the nature of the public appearance, no prepared script or outline will be available for clearance, the employee is responsible for ensuring that the employee's own remarks involve no violation of

security, are consistent with U.S. foreign policy, and will not adversely affect U.S. foreign relations.

628.3-2 Speaking and Interviews Abroad

a. Authorization

Under prior approval of the ambassador, or designee, an employee abroad may give public speeches and lectures and participate in conferences and the like and hold on-the-record newspaper interiews or other formal discussions of government policy. Prior interagency consultation on important public statements is expected, where appropriate.

b. Topics to be Avoided

An employee abroad may not allude in public speeches or newspaper interviews to disputes between governments, to active political issues in the United States or elsewhere, or to any matter pending at any post, except by the direction or with the authorization of the ambassador, or designee.

628.4 Racially Segregated Audiences

Employees should not participate in conferences or speak before audiences in an official capacity where any racial group has been segregated or excluded from the meeting, from any of the facilities of the conference, or from membership in a sponsoring organization. For State and USIA only: Exceptions to this general policy may be made only by the respective agency head (for personnel in the United States) or by the chief of the diplomatic mission (for personnel abroad).

628.5 Writing

628.5-1 Acting as Correspondent for Communications Media

Certain employees carry on active liaison with representatives of communications media. However, no employee shall act as correspondent for any newspaper, press syndicate, association, or other media unless special authorization has been obtained in advance from the appropriate official. The appropriate official for State is the Assistant Secretary for Public Affairs; for AID, the Director, Information Staff; and for USIA, the Assistant Director (Public Information).

628.5-2 Official Writing for External Publication

To ensure consistency with U.S. policy, heads of State, AID, and USIA and overseas establishments and employees in the United States with the rank of office director or above for State, and AID, or with the rank of Assistant Director for USIA, shall submit for clearance by the appropriate office named in section 628.3-1 all written material prepared in an official capacity for external publication under bylines or official titles. Preliminary clearances shall first be obtained from appropriate offices of the agency concerned with the subject matter. Subordinate personnel shall, after obtaining any necessary preliminary substantive clearances from appropriate offices of the agency concerned with the subject matter, submit such material for clearance to (1) the head of their overseas establishment, if serving abroad, or (2) their office director or official of comparable rank if in State or AID, or by the office or service head if in USIA, if assigned in the United States, who may either disapprove the material or approve it and refer it for further review by the appropriate office named in section 628.3-1a.

628.5-3 Unofficial Writing

All books, articles, and other manuscripts of official concern under section 628.2, prepared for publication by an employee in an unofficial capacity, shall be submitted for clearance in advance of publication in accordance with procedures in section 628.5-2. Authors will be notified of decisions with respect to clearance of manuscripts, and the manuscripts will be either returned or forwarded, upon written request, to publishers or agents designated by the author. All such writings which are not on matters of official concern need not be submitted for clearance; however, unless the unofficial writing is clearly not on a subject of official concern under section 628.2, the employee is responsible for having published with it a specific statement to the effect that the opinions and views expressed are the employee's own and not necessarily those of the employee's agency. If there is doubt as to the propriety of the proposed publication, the employee should seek guidance or advice from the areas concerned with the subject matter.

To avoid possible embarrassment, employees should not make commitments to publishers until manuscripts have been approved. Personnel stationed abroad shall use their best efforts to assure that members of their families (as defined in 3 FAM 620 section 10.735-102) also follow these procedures.

628.6 Teaching

628.6-1 In the United States

Officers of the rank of office director and above in State and AID, and of Assistant Director, General Counsel, and Inspector General and above in USIA, may accept teaching engagements in the United States at their own discretion without approval by higher authority.

Any other employee before accepting a teaching engagement must obtain approval of the employee's office director if in State or AID, or of own office or service head if in USIA, and of the appropriate office named in section 628.3-1a. If the subject matter to be taught is of official concern under section 628.2, the request for approval shall include a detailed outline of the course to be taught, including the names of required texts and brief descriptions of other reading materials, the name of the institution for which the class is to be taught, the frequency of classes, and the period of time involved; and the request shall be routed for clearance through the areas of the employee's agency concerned with the subject matter. If the subject matter to be taught is clearly not of official concern, the request for approval shall be in the form indicated above but a brief description of the course may be substituted for the detailed outline. All approvals of teaching engagements must be renewed each school year.

628.6-2 Abroad

Before accepting an engagement to teach abroad an employee must obtain approval as required by the uniform State/AID/USIA regulations on employee responsibilities and conduct, 3 FAM 620 (AID M.O. 443.1) section 10.735-206(b). The request for approval shall include a detailed outline of the course to be taught, including the names of required texts and brief descriptions of other reading materials, the name of the institution for which the class is to be taught, the frequency of classes, and the period of time involved. The restrictions contained in section 628.3-2b apply to all courses taught abroad. All approvals of teaching engagements must be renewed each school year. Personnel stationed abroad shall use their best efforts to assure that members of their families (as defined in 3 FAM 620 section 10.735-102) follow the procedures for obtaining approval to teach set forth in 3 FAM 620 (AID M.O. 443.1) section 10.735-206.

628.7 Compensation

628.7-1 Advance Approval

Without the advance approval of the agency's Counselor on Ethical Conduct and Conflicts of Interest an employee may not accept compensation, fees, honorariums, or anything of monetary value for any consultation, speech, lecture, discussion, writing, appearance, or teaching engagement for which clearance is required under sections 628.3, 628.5, or 628.6 because the subject is of official concern under section 628.2. The applicable standards governing receipt of compensation are set forth in sections 10.735-201(a), 204, and 206 of 3 FAM 620 (AID M.O. 443.1). Requests for such approval may be submitted to the office responsible for final clearance (see sections 628.3 and 628.5) at the time clearance is sought. This office shall forward the request to the agency's Counselor on Ethical Conduct and Conflict of Interest.

628.7-2 Suggesting Use of Funds

An employee who is prohibited pursuant to the provisions of section 628.7-1 from accepting compensation or anything of monetary value for certain activities may suggest that what the employee otherwise would receive be paid into the Treasury of the United States, be donated to the employee's agency as a gift, or be donated to a charity by the sponsoring organization in its own name. Whether any donation or contribution be made and, if so, to whom, shall be left to the discretion of the sponsoring organization.

628.8 Reimbursement of Expenses

628.8-1 Acceptance

a. With the prior approval of the office responsible for final clearance (see sections 628.3 and 628.5), an employee who is prohibited from accepting compensation or anything of monetary value may accept from a sponsoring organization reimbursement of actual expenses incurred in connection with such activity, where allowed by 3 FAM 620 (section 10.735-202(f)).

b. Where acceptance of direct reimbursement by an employee is prohibited or is disapproved by the office responsible, the employee's agency may nev-

ertheless accept reimbursement as a gift.In such cases, and with the prior approval of the office responsible, the employee may accept accommodations or services in kind as a gift on behalf of the agency.

c. A member of an employee's family who has been invited by the sponsoring organization to accompany the employee to a function is free to accept reimbursement for own expenses.

628.8-2 Solicitation

a. An employee shall not solicit reimbursement for expenses, nor shall the employee solicit an invitation for a member of the employee's family to accompany the employee in connection with an activity for compensation or anything of monetary value.

b. Reimbursement may be accepted only when freely offered or tendered by the sponsoring organization. However, it is the policy in responding to an invitation to furnish an officer to speak, lecture, or participate in a conference, to inquire whether the sponsoring organization is prepared to pay the actual and necessary expenses incurred in connection with such activity.

628.8-3 Official Reimbursement

a. When a sponsoring organization pays all or a portion of the expenses of an employee in connection with a speech, lecture, discussion, or appearance, the employee shall not be reimbursed by own agency for that portion of per diem and travel expenses which was paid by the sponsoring organization. However, no deduction shall be made for luncheons, dinners, receptions, and similar functions incidental to the activity.

b. For USIA employees, no costs for such appearances, including transportation, per diem, and related expenses, will be charged to USIA appropriated funds unless specifically authorized by the Director of USIA.

ATTACHMENT 2F

REPORTING SUSPECTED OFFENSES AND MAKING COMPLAINTS INVOLVING AGENCY PROGRAMS, OPERATIONS, EMPLOYEES OR MONIES

2A. Purpose

This attachment provides the authorities, policies and procedures for the mandatory reporting of suspected offenses, including waste, fraud, abuse, corruptions, or any violation of law, regulation or rule involving Agency programs, operations, employees or monies, and for making complaints to the Agency Inspector General.

2B. Applicability

This attachment applies to all persons employed by the Agency, regardless of citizenship or location.

2C. Authorities

1. E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, April 12, 1989

2. 28 U.S.C. 535, Investigation of Crimes Involving Government Officers and Employees

3. Inspector General Act of 1978, as amended

2C. Policies

1. Employees must promptly report any information, allegation or complaint relating to waste, fraud, abuse, corruption or any violation of law, regulation or rule involving Agency programs, operations, employees or monies to the Office of the Inspector General, Office of Investigations (IG/I).

2. An employee may report a suspected offense or make a complaint to IG/I directly; he/she is not required to go through his/her supervisor.

3. The identity of the employee reporting a suspected offense will not be disclosed without the employee's consent, unless special circumstances prevent such nondisclosure, e.g., the employee's testimony is required.

4. The IG/I will accept anonymous reports and complaints.

5. A supervisor will not take or threaten to take retaliatory action, directly or indirectly, against any employee for reporting a suspected offense, making a complaint or disclosing information to the IG/I.

2D. Responsibilities

1. Office of Investigations, Office of the Inspector General (IG/I)

Determines what action is to be taken, by whom and when, in response to a suspected offense or complaint.

2. Employee

a. Reports, in writing or verbally, a suspected offense to the IG/I, directly or through his/her supervisor.

b. Contacts IG/I when in doubt as to whether a situation or incident constitutes an offense.

2E. Reporting Procedure

Reports of suspected offenses or complaints should be addressed to:

1. In AID/Washington, the Office of the Assistant Inspector General for Investigations (AIG/I).

2. At overseas posts, the Regional Inspector General for Investigations serving the post.

ATTACHMENT 2G

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Subchapter 1. General Provisions

1-1. RIGHTS RESERVED TO EMPLOYEES

Specifically reserved to an employee affected by section 7324 of title 5, United States Code, and civil service rule IV are the right to vote as he pleases and the right to express his opinion as an individual on all political subjects and candidates.

1-2. NATURE OF RESTRICTIONS

The restrictions on the political activity of employees of the executive branch of the Federal Government are in subchapter III of chapter 73, title 5, United States Code and section 14. of civil service rule IV. The law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in political management or in political campaigns. Section 7324 prohibits the same activities on the part of all employees of the executive branch which the Commission had prior to July 19, 1940, determined were prohibited on the part of employees in the competitive service under the civil service rules. Restrictions other than those imposed by section 7324 of title 5, United States Code, and rule IV are summarized in subchapter 5.

1-3. RESPONSIBILITY FOR ENFORCEMENT

→a. **Competitive Service.** The Commission is responsible for enforcing the restrictions against political activity by employees in the competitive civil service. By agreement with the U.S. Postal Service, the Commission investigates and adjudicates allegations of political activity involving postal employees. Any individual or agency having knowledge of a possible violation of Subchapter III of Chapter 73 of title 5, U.S.C. (the Hatch Act) by an employee in the competitive service or by a postal employee should promptly provide all relevant information directly to the Office of the General Counsel, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, phone: (202) 632-7600.

b. **Excepted Service.** The employing agency is responsible for enforcing the restrictions against political activity by employees in the excepted service. Any individual or agency having knowledge of a possible violation of Subchapter III of Chapter 73 of title 5, U.S.C. (the Hatch Act) by an employee in the excepted service should promptly provide all relevant information directly to the employing agency.←

1-4. PENALTIES

An employee found to have violated the restrictions imposed by section 7324 of title 5, United States Code or section 4.1 of civil service rule IV must be removed from his position and cannot be reemployed in any position the pay of which is payable under the same appropriation as the position from which he was removed. This restriction is not limited to the appropriation act for any particular fiscal year. If, however, the Commission determines by unanimous vote that the violation does not warrant removal, it may impose a lesser penalty, but the penalty cannot be less than a 30-day suspension without pay.

Subchapter 2. Coverage

2-1. GENERAL COVERAGE

a. **Employees subject to restrictions.** In the absence of specific statutory exemption, the basic political activity restrictions apply to any person employed in the executive branch of the Federal Government, or any agency thereof, or in the government of the District of Columbia→and to officers, employees and enrollees of the Job Corps.←If the employee is in doubt about whether any particular activity is prohibited, he should write to the General Counsel of the Civil Service Commission for advice before engaging in the activity.

b. **Reporting violations.** It is the duty of any person having knowledge of a violation of any of the provisions prohibiting political activity to submit the facts to the Office of the General Counsel, United States Civil Service Commission, Washington, D.C. 20415.

2-2. ACTIVITY THROUGH ANOTHER PERSON

Any political activity that is prohibited for an employee acting independently is also prohibited for an employee acting in open or secret cooperation with others. Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation. This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative and in his or her own behalf.

2-3. EMPLOYEES ON LEAVE

In general, an employee who is subject to the basic political activity prohibitions while on active duty is subject to them while on leave with pay, leave without pay, or furlough, and incurs the same penalties for an offense committed while in leave or furlough status as for an offense committed while on active duty. This applies though the leave is terminal leave, and even though the employee's resignation has been submitted and accepted. However, if lump-sum payment is made for accrued annual leave the person involved is not subject to the political activity restrictions during the period covered by the lump-sum payment or thereafter. It is not permissible for an employee to take leave of absence for the purpose of working with a political candidate, committee, or organization, or for the purpose of becoming a candidate for office with the understanding that he will resign his position if nominated or elected.

2-4. INTERMITTENT EMPLOYEES

Persons who are employed on an irregular or occasional basis, e.g., experts and consultants on a per diem basis, or w.o.c. and w.a.e. employees, are subject to the political activity restrictions of the law while in an active duty status only and for the entire 24 hours of any day of actual employment.

2-5. TEMPORARY, PART-TIME, AND EMERGENCY EMPLOYEES

Temporary, part-time, and emergency employees are subject to the statute and rule.

2-6. PERSONS NOT SUBJECT TO RESTRICTIONS

a. The prohibition against active participation in political management and in political campaigns in section 7324(a)(2) of title 5, United

States Code, and section 4.1 of civil service rule IV, does not apply to the following persons:

(1) *Executive branch*

An employee paid from the appropriation for the Office of the President.

The head or the assistant head of an executive department or military department.

An employee appointed by the President by and with the advice and consent of the Senate, and who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws.

Ambassadors of the United States.

Ministers of the United States.

An employee of The Alaska Railroad residing in a municipality on the line of the railroad when the permitted activity is confined to the municipality in which he resides.

→An employee who works on an irregular or occasional basis on the days that he performs no services.←

(2) *District of Columbia*

The Recorder of Deeds of the District of Columbia.

b. The political activity restrictions of chapter 73 of title 5, United States Code and civil service rule IV do not apply to the following persons:

(1) *Legislative branch*

Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks of Members of Congress and congressional committees.

(2) *Judicial branch*

Officers and employees of the judicial branch of the Federal Government, including United States commissioners, clerks of United States courts, referees in bankruptcy, and their secretaries, deputies, and clerks.

→2-7. TOTAL EXEMPTION FROM THE RESTRICTIONS←

a. Officers or employees of any educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia, or by any recognized religious, philanthropic, or cultural organization.

b. Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office.

c. Persons who receive benefit payments, such as old age assistance and unemployment compensation under the Social Security Act.

d. Persons retired from the Federal service, unless reemployed in the executive branch of the Federal Government.

e. Persons serving as star route and contract carriers and clerks in fourth-class post offices, provided such persons are not at the same time holding other Government employment.

2-8. OFFICERS, EMPLOYEES AND ENROLLEES OF THE JOB CORPS

Enrollees of the Job Corps, as well as officers and employees of the Job Corps, are subject to the same basic political activity restrictions as persons employed in the executive branch of the Federal Government. (Section 118 of the Economic Opportunity Act of 1964, as amended →(42 U.S.C. 2728, as amended).)←

Subchapter 3. Permissible and Prohibited Activities

3-1. DEFINITIONS

a. In this chapter

(1) *Political party* means a national political party, a State political party, and an affiliated organization;

(2) *Election* includes a primary, special, and general election;

(3) *Nonpartisan election* means—

(a) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(b) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character; and

(4) *Partisan* when used as an adjective refers to a political party.

3-2. PERMISSIBLE ACTIVITIES

a. All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law. Each employee retains the right to:

(1) Register and vote in any election;

(2) Express his opinion as an individual citizen privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fundraising function; or other political gathering;

(7) Sign a political petition as an individual citizen;

(8) Make a financial contribution to a political party organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by subchapter 4.

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his agency.

(b) Paragraph (a) of this section does not authorize an employee to engage in political activity in violation of law, while on duty, or while in a uniform that identifies him as an employee. The head of an agency may prohibit or limit the participation of an employee or class of employees of his agency in an activity permitted by paragraph (a) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

3-3. PROHIBITED ACTIVITIES

a. An employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

b. An employee may not take an active part in political management or in a political campaign, except as permitted by law or regulation.

c. Activities prohibited by paragraph (b) of this section include but are not limited to:

(1) Serving as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose or in connection with a partisan election;

(4) Organizing, selling tickets to, seeking support for, or actively participating in a fund-raising activity of, a political party or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office or political party office;

(6) Being a candidate for, or campaigning for, an elective public office;

(7) Taking an active part in an organized solicitation of votes in support of or in opposition to a candidate for public office or political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate in a partisan election in a political advertisement, a broadcast, campaign literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a State or national convention or caucus, or a rally or similar gathering of a political party in support of or in opposition to a candidate for public or political party office, or on a partisan political question; and

(13) Initiating or circulating a nominating petition for a candidate in a partisan election.

Subchapter 4. Exception of Certain Elections

4–1. EXCEPTED ELECTIONS

a. Sections 7326 and 7327 of title 5, United States Code, provide exceptions to the prohibition against activity in political management or in a political campaign by an employee in connection with:

(1) A nonpartisan election, and

(2) Subject to the conditions and limitations established by the Commission, an election held in a municipality or political subdivision designated by the Commission under section 7327.

4–2. GRANT OF PRIVILEGE TO RESIDENTS OF CERTAIN LOCALITIES

a. **Eligible localities.** The Civil Service Commission is authorized by section 7327 to issue regulations permitting Federal employees, who live in a municipality or other political subdivision in the immediate vicinity of the District of Columbia in the States of Maryland and Virginia or in municipalities where the majority of voters are employed by the Federal Government, to take part in political management and political campaigns in connection with partisan elections for local offices, as provided in section 4–4.

b. **Requirements for privilege.** As a prerequisite to the extension of the privileges of section 7327 to any particular locality the Commission must determine that special or unusual circumstances exist which show that participation in local politics is in the domestic interest of the employees who reside in that community.

4–3. REQUEST FOR PRIVILEGE

Requests for the extension of the privileges of section 7327 to any locality must be made formally, and must be submitted to the Commission by representatives of the community involved. The petitioners must furnish certain specified information about their community and its elections. Information about the data to be furnished, and the prerequisites to be met, may be obtained from the United States Civil Service Commission, Washington, D.C. 20415.

4–4. RESTRICTIONS WHERE PRIVILEGE HAS BEEN GRANTED

a. The privilege of active participation in local self-government, when granted by the Commission, under section 7327, is subject to the following restrictions:

(1) Participation shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate;

(2) Candidacy for, or service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict or apparent conflict of interests.

4–5. DESIGNATED LOCALITIES

The Commission has extended the privileges allowed by section 7327 of title 5, United States Code, to the following municipalities or political subdivisions by formal action recorded on the dates indicated:

In Maryland

Annapolis (May 16, 1941)
Anne Arundel County (Mar. 14, 1973)
Berwyn Heights (June 15, 1944)
Bethesda (Feb. 17, 1943)
Bladensburg (Apr. 20, 1942)
Bowie (Apr. 11, 1952)
Brentwood (Sept. 26, 1940)
Capitol Heights (Nov. 12, 1940)
Cheverly (Dec. 18, 1940)
Chevy Chase, sections 1 and 2 (Mar. 4, 1941)
Chevy Chase, section 3 (Oct. 8, 1940)

Chevy Chase, section 4 (Oct. 2, 1940)
Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941)
Chevy Chase View (Feb. 26, 1941)
College Park (June 13, 1945)
Cottage City (Jan. 15, 1941)
District Heights (Nov. 2, 1940)
Edmonston (Oct. 24, 1940)
Fairmont Heights (Oct. 24, 1940)
Forest Heights (Apr. 22, 1949)
Garrett Park (Oct. 2, 1940)
Glenarden (May 21, 1941)
Glen Echo (Oct. 22, 1940)
Greenbelt (Oct. 4, 1940)
→Howard County (Apr. 25, 1974)←
Hyattsville (Sept. 20, 1940)
Kensington (Nov. 8, 1940)
Landover Hills (May 5, 1945)
Montgomery County (Apr. 30, 1964)
Morningside (May 19, 1949)
Mount Rainier (Nov. 22, 1940)
North Beach (Sept. 20, 1940)
North Brentwood (May 6, 1941)
North Chevy Chase (July 22, 1942)
Northwest Park (Feb. 17, 1943)
Prince Georges County (June 19, 1962)
Riverdale (Sept. 26, 1940)
Rockville (Apr. 15, 1948)
Seat Pleasant (Aug. 31, 1942)
Somerset (Nov. 22, 1940)
Takoma Park (Oct. 22, 1940)
University Park (Jan. 18, 1941)
Washington Grove (Apr. 5, 1941)

In Virginia

Alexandria (Apr. 15, 1941)
Arlington County (Sept. 9, 1940)
Clifton (July 14, 1941)
Fairfax County (Nov. 10, 1949)
Town of Fairfax (Feb. 9, 1954)
Falls Church (June 6, 1941)
Herndon (Apr. 7, 1945)
Loudoun County (Oct. 1, 1971)
Portsmouth (Feb. 27, 1958)
Prince William County (Feb. 14, 1967)
Vienna (Mar. 18, 1946)

Other Municipalities

Anchorage, AK (Dec. 29, 1947)
Benicia, CA (Feb. 20, 1948)
Bremerton, WA (Feb. 27, 1946)
Centerville, GA (Sept. 16, 1971)
Crane, IN (Aug. 3, 1967)
→District of Columbia (May 16, 1974)←
Elmer City, WA (Oct. 28, 1947)
Huachuca City, AZ (April 9, 1959)
New Johnsonville, TN (April 26, 1956)
Norris, TN (May 6, 1959)
Port Orchard, WA (Feb. 27, 1946)
Shrewsbury, NJ (July 2, 1968)
Sierra Vista, AZ (Oct. 5, 1955)
Warner Robins, GA (Mar. 19, 1948)

Subchapter 5. Other Restrictions on Political Activity

5-1. POLITICAL CONTRIBUTIONS AND ASSESSMENTS

Sections 602, 603, 606, and 607 of title 18 of the United States Code, which were originally sections 11, 12, 13, and 14 of the Civil Service Act, deal with political assessments. The penalty for violations of these sections is a fine of no more than $5,000 or imprisonment for no more than three years, or both. These violations are considered to be felonies, as they are punishable by terms of imprisonment exceeding one year.

5-2. POLITICAL ASSESSMENTS

a. **Coverage.** Provisions of these sections make it unlawful for any of the following officers, employees, or persons to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any other officer, employee, or person:

(1) Senators and Representatives in, and Delegate or Resident Commissioners to, Congress;

(2) Candidates for and persons elected as Senator, Representative in, or Delegate or Resident Commissioner to, Congress;

(3) Officers and employees of the United States;

(4) Persons receiving any pay for services from money derived from the Treasury of the United States.

b. **"Political purpose" defined.** The words "for any political purpose," as used above, qualify not only the contribution, but the solicitation (*United States* v. *Scott*, 74 Fed., 213).

c. **Acting as agent or messenger.** The statutory prohibition applies to the receipt of a political contribution as a mere agent or messenger for the purpose of turning it over to a political organization (*United States* v. *Dutro*, L.W. 1913, Western District of Tennessee, unreported).

5-3. CIRCULARS OF SOLICITATION

The sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon which or attached to which appear the names of Federal officers or employees, is a violation of the prohibition on political assessments (24 Op. Atty. Gen. 133). The statute, as it stands, together with the opinion just cited, unquestionably condemns all such circulars, notwithstanding the particular form of words adopted in order to show a request rather than a demand, and to give responses a quasi-voluntary character.

5-4. SOLICITATION IN FEDERAL BUILDINGS

All persons, whether or not employed by the United States, are prohibited from soliciting in any manner whatever or receiving a contribution of money, or any other thing of value, for any political purpose whatever in any room or building occupied in the discharge of official duties by any officer or employee of the United States, or in any navy yard, fort, or arsenal.

5-5. SOLICITATION BY LETTER

Solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of section 603 of title 18 of the U.S. Code (*United States* v. *Thayer*, 209 U.S. 39). It has been held that sending letters through

the mails to Government employees soliciting political contributions is a violation of 18 U.S.C. 603 when the street or home address is omitted and the letters are consequently delivered by the postal authorities to a Government building.

5–6. PAYMENT BY ONE EMPLOYEE TO ANOTHER

No officer, clerk, or other person in the service of the United States shall directly or indirectly give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator, Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object (18 U.S.C. 607).

5–7. DISCRIMINATION BECAUSE OF POLITICAL CONTRIBUTIONS

Discrimination, and promises or threats to discriminate, for giving or withholding or neglecting to make any contribution for any political purpose are prohibited.

5–8. PURCHASE AND SALE OF PUBLIC OFFICE

a. **Statutory prohibition.** The United States Code, title 18, sections 210 and 211, provides that it shall be unlawful:

(1) To pay or offer or promise to pay any money, or thing of value, to any person, firm, or corporation in consideration of the use or promise of use of any influence to procure any appointive office or place under the United States for any person.

(2) To solicit or receive, either as a political contribution, or for personal emolument, any money or thing of value in consideration of the promise of support, or use of influence, in obtaining for any person any appointive office or place under the United States.

b. **Penalty.** The penalty for violation is imprisonment of not more than one year, or fine of not more than $1,000 or both.

5–9. POLITICAL RECOMMENDATIONS AND DISCRIMINATION

Civil service laws and other statutes, and the civil service rules, contain provisions prohibiting political discrimination, promotions because of political influence, political recommendations, and the consideration or filing of political recommendations.

5–10. OTHER CRIMINAL OFFENSES

a. Various political activities are made criminal offenses by provisions of United States law other than those described above. These provisions of law are enforced by the Department of Justice, and the penalty for their violation is a fine of no more than $1,000 or imprisonment for no more than one year, or both. Among the acts made unlawful by these provisions are:

(1) Intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).

(2) Using official authority in interfering with a Federal election by a person employed in any administrative position by the United States or by any department, independent establishment, or agency of the United States or by any State, agency, or political subdivision thereof in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).

(3) Promising Federal employment, compensation, or any benefit from Federal funds, in return for political activity or support (18 U.S.C. 600).

(4) Depriving anyone of employment, compensation, or any benefit derived from Federal relief or work relief funds on account of race, creed, color, or political activity (18 U.S.C. 601).

(5) Soliciting, assessing, or receiving subscriptions or contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 604).

(6) Furnishing or disclosing or receiving by anyone of lists of persons on Federal relief or work relief for political purposes (18 U.S.C. 605).

(7) Using Federal funds appropriated for relief, work relief, or public works, so as to interfere with or coerce any individual in his right to vote (18 U.S.C. 598).

(8) Paying or offering to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress (18 U.S.C. 597).

(9) Soliciting, receiving, or accepting payment for one's vote or for withholding one's vote (18 U.S.C. 597).

Subchapter 6. Procedures for the Competitive Service

6–1. INVESTIGATION

Investigation of allegations of prohibited political activity on the part of an employee in the competitive service is conducted by the Civil Service Commission. The employing agency is notified of the investigation. The employee may make a statement concerning the substance of the allegations of political activity on his part.

6–2. NOTIFICATION OF PROPOSED ACTION—CHARGES

a. **Charges.** The Commission's General Counsel notifies the employee in writing when he decides that the report of investigation indicates that the law or the rule has been violated. The notice lists all charges, specifically and in detail, and the penalty. The employee is entitled to be retained in an active duty status until a final decision is made by the Commission. Any adverse personnel action is taken by the agency upon the instruction of the Commission. The employee and the employee's agency are likewise notified if the General Counsel determines to close any case with a finding that a violation of the law and rule has not been established.

b. **Reply.** The employee is allowed 15 days from his receipt of the notice to submit an answer. His answer may be in person or in writing, or both, and he may also furnish affidavits to support his answer.

c. →**Referral.** After reviewing the employee's answer or after the time for answering has expired, the General Counsel may close the case or refer it to the Commission's examiner for further proceedings.

d. **Motions.** An application or request for an order or ruling not otherwise specifically provided for shall be made by motion addressed to the Commission or the examiner. The motion and supporting reasons shall be served on the parties. Objections to a motion shall be submitted within 10 days after the motion is served, except that a motion for continuance or extension of time may be ruled upon ex parte.

6–3. HEARING

(a) Unless the employee and the General Counsel agree to waive a hearing, the examiner shall schedule a hearing considering the convenience of the parties in setting time and place. The hearing examiner shall notify the parties of the date and place of the hearing at least 10 days in advance.

(b) Testimony is under oath or affirmation. Witnesses who testify are subject to cross-examination. Each party is responsible for securing the attendance of his witnesses. The examiner may allow the introduction of affidavits.

(c) The hearing is recorded by a reporter designated by the Commission. The Commission. The Commission furnishes a copy of the transcript to the employee without charge.

6–4. DECISION

Following the hearing, or the receipt of the file when hearing is waived, the examiner shall prepare and forward to the Commission his recommended decision and the record on which it is based. The Commission makes its decision on this record and notifies the employee and the employing agency.

6–5. PROCEDURES FOR JOB CORPS

An action against an officer, employee or an enrollee of the Job Corps is processed by the Commission under the same procedures as for the competitive service.←

Subchapter 7. Procedures for the Excepted Service

7-1. JURISDICTION

The restrictions on political activity in sections 7324–7327 of title 5, United States Code, and in sections 733.111–733.124 apply to employees in the excepted service. It is the responsibility of the employing agency to investigate and decide allegations of prohibited political activity on the part of an excepted-service employee.

7-2. AGENCY PROCEDURE

In cases of alleged political activity by employees in the excepted service, agencies should follow procedures like those in subchapter 6.

7-3. APPEAL TO THE COMMISSION

a. If the final agency decision is adverse to the employee, he may appeal to the Commission no later than 15 days after his receipt of the decision. The notice of decision should inform the employee of the right of appeal to the Commission, the time limit for appeal, and the place where the appeal must be filed. The Commission, at its discretion, may extend the 15-day time limit for filing an appeal if the employee shows that due to circumstances beyond his control, he was unable to file his appeal within the time allowed.

b. The appeal must be in writing, addressed to the United States Civil Service Commission, Washington, D.C. 20415, and should state whether the employee wishes a hearing. If the employee waives a hearing, the case is submitted on the record to the Commissioners.

7-4. RETENTION OF EMPLOYEE PENDING DECISION ON APPEAL

If the employee files a timely appeal with the Commission, he should be retained in an active duty status until a final decision is made by the Commissioners. If an appeal is not taken within the time allowed, the administrative decision of the agency becomes final.

7-5. HEARING ON APPEAL TO THE COMMISSION

a. **Right of hearing.** An employee who appeals to the Commission has the right to a personal appearance, called a hearing. The hearing is held at the time and place that the Commission may determine. Notice of hearing is given at least 10 days in advance of the date of the hearing.

b. **Information considered.** The hearing is held before an examiner designated by the Commission. Testimony is under oath or affirmation. Affidavits and other documentary evidence may be introduced.

c. **Representation.** The employee may be represented by counsel. The employee and the agency representative each are responsible for securing the attendance of their witnesses. Witnesses who testify at the hearing are subject to cross-examination.

d. **Recording.** The hearing is recorded by a reporter designated by the Commission. The Commission furnishes a copy of the transcript to the employee without charge.

e. **Filing briefs.** It is within the discretion of the examiner to permit, and fix the time for, the filing of briefs.

7-6. FINAL DECISION

The decision of the Commissioners is sent to the employee and the employing agency and states the reasons on which it is based. The employing agency is required to comply with the decision.

Executive Personnel Financial Disclosure Report

Instructions for Completing SF 278

Privacy Act Statement

The Ethics in Government Act of 1978, Public Law 95-521, requires the reporting of this information. This information will be reviewed by Government officials to determine compliance with the intent of the Act and may be disclosed upon request to any requesting person pursuant to section 205 of the Act or as otherwise authorized by law. You may inspect applications for review of your own form upon request. Knowing or willful failure to file or report information required to be reported by section 202 of the Act (or falsification) may subject you to a civil penalty of not more than $5,000 and to disciplinary action by your employing agency or other appropriate authority. Knowing or willful falsification of information required to be filed by section 202 of the Act may also subject you to criminal prosecution under 18 U.S.C. §1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both.

I. Introduction

Scope of Disclosure

A reporting individual is required to include in addition to his or her separate financial information, information concerning his or her spouse and dependent children in some sections of this report. The extent of the reporting requirement is explained in each section of these instructions. Incumbents (in positions described in section II(c) of these instructions) are generally required to report information with respect to the previous calendar year. Nominees, candidates, and new entrants (to positions described in section II(c)) and those filing termination reports, generally report information for the previous calendar year and the current calendar year until at least 31 days before the date of filing.

However, no report is required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation. In addition, no report is required with respect to any income or obligations of an individual arising from the dissolution of a marriage or the permanent separation from a spouse.

Dependent Child

The term "dependent child" means a son, daughter, stepson, or stepdaughter of a reporting individual and who is either: (i) unmarried, under age 21, and is living in the household of the reporting individual, or (ii) a "dependent" of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954.

Definition of "Value"

"Value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

Category of Amount

Reportable financial interests are disclosed either by exact amount or by category of amount, depending on the interest as shown in the form. A reporting individual may, but is not required to, indicate an exact amount where the form provides for a category of amount or value.

II. Who Must File

a. Candidates for nomination or election to the office of President or Vice President.
b. Presidential nominees to positions requiring the advice and consent of the Senate, other than those nominated for judicial office or for appointment to a rank in the uniformed services at a pay grade of 0-6 or below.
c. The following newly elected or appointed officials:
   —The President;
   —The Vice President;
   —Officers and employees (including special government employees, as defined in 18 U.S.C. §202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1);
   —Members of the uniformed services whose pay grade is 0-7 or above;
   —Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;
   —Administrative law judges;
   —Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics;
   —The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service and officers or employees of the U.S. Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16 (step 1); and
   —The Director of the Office of Government Ethics and each designated agency ethics official.
d. Officials in a position described in section II(c) of these instructions if they have served 61 days or more during the preceding calendar year.

III. When to File

a. Within 30 days after becoming a candidate for nomination or election to the office of President or Vice President or by May 15 of that calendar year, whichever is later, and on or before May 15 of each succeeding year that such an individual continues to be a candidate on such date.
b. Within 5 days after the transmittal by the President to the Senate of the nomination of an individual referred to in section II(b) of these instructions.
c. Within 30 days after assuming a position described in section II(c) unless such an individual has left another position described in section II(c) within 30 days prior to assuming the new position, or has already filed a report with respect to nomination for the new position (section II(b)) or as a candidate for the position (section II(a)).
d. No later than May 15 annually, in the case of those in a position described in section II(c). In the event such an individual terminates employment, and does not accept another position described in section II(c), the report must be filed no later than the 30th day after termination, covering:
   i. the preceding calendar year if the annual May 15 report has not been filed, and
   ii. the portion of the present calendar year up to the date of termination.

IV. Where to File

a. Candidates for President and Vice President, with the Federal Election Commission.
b. The President and Vice President, with the Office of Government Ethics.
c. Members of a uniformed service, with the Service Secretary concerned.
d. All others, with the designated agency ethics official at the agency in which the individual is employed or in which he or she will serve.
e. In the case of individuals appointed by the President with the concurrence of the Senate, see 5 CFR §734.604(c) for expedited procedure.

V. General Instructions

a. This form consists of the front page and four schedules. All schedules are to be completed by the reporting individual. If you have no information to report in a section you should enter "None". A report is considered incomplete if any section is left blank. Schedule A combines a report of income items (other than from employment by the United States Government) with the disclosure of property interests. Schedule B deals with transactions in property or other assets. Schedule C relates to gifts and reimbursements. Schedule D relates to liabilities and employment relationships. After completing the first page and each of the schedules (including extra sheets of any schedule where continuation pages are required), consecutively number all pages.
b. The information to be disclosed is only that which the Ethics in Government Act of 1978 and 5 CFR Part 734 specifically require. Reporting individuals may, however, include in any section of the form such additional information, over and above the Act's requirements, as they may wish to disclose for purposes of clarification.

c. Combine on one form the information applicable to yourself, your spouse and dependent children; or, if more convenient, use separate schedules to report the required information applicable to family members. You may, if you desire, distinguish any entry for a family member by preceding the entry with an (S) if it is for a spouse or a (DC) if it pertains to a dependent child in the column provided.
d. Definitions of the various terms used in these instructions and detailed information as to what is required to be disclosed is contained in 5 CFR Part 734.

Schedule A

Earned and Other Non-Investment Income

Items to Report

Report the identity of the source and amount of non-investment income exceeding $100, received from any one source, other than the United States Government. This income includes fees, commissions, compensation for personal services, pensions, etc.

The source, **but not the amount,** of your spouse's non-investment income exceeding $1,000 from any one source must also be reported.

Incumbents in positions described in section II(c) of these instructions report all income items for the preceding calendar year. Nominees, candidates, and new entrants to positions described in section II(c) (and those filing termination reports) report all income items for the preceding calendar year and the current calendar year until at least thirty days of the date of filing. (Omit the preceding calendar year in the case of a termination report, if a previous annual filing has covered that year).

What to Show on the Form

1. HONORARIA—Means payment of money or anything of value to **you or your spouse** for an appearance, speech, or article. For each honorarium you received in excess of $100 **show the identity of the source, the date and net amount.** List each honorarium separately. For example, if you received $1,400 for a speech before the Chicago Civic Club on March 19, 1979, of which $200 was actually spent for round-trip travel, and $200 went to the agent who made the speaking arrangement, show under IDENTIFICATION . . . "Chicago Civic Club, 18 Orleans Ave., Chicago, IL"; under TYPE specify . . . "Honoraria"; under AMOUNT . . . "$1,000"; and under DATE . . . "3-19-79". If the same item of income was received under the same circumstances by your spouse, who is self-employed as a marketing consultant, you would enter under IDENTIFICATION . . . "speech by spouse who is a marketing consultant" (or an equivalent statement). If your spouse's net honorarium from any source was less than $1,000, nothing would be reported.

   Honoraria received and donated to charity must be reported, but a notation explaining that fact may be included in reporting such items.
2. OTHER INCOME—Income, exclusive of honoraria, received from non-investment sources including fees, commissions, income from personal services, pensions, etc. Report the **identity of the source and give the amount of such income.** For example, if you earned $450 teaching at a law school, show under IDENTIFICATION . . . "John Jones Law School, Rockville, MD"; under TYPE specify . . . "Salary"; and under AMOUNT . . . "$450". **Exclude income totaling less than $100 from any one source.** For example, if you earned $75 for teaching in one law school and $150 from teaching at another school, report only the $150 amount.

   If **your spouse** has earned income in excess of $1,000 from any one source **identify the source but show nothing under amount.** If your spouse is self-employed in a business or profession, for example as a practicing psychologist who earned $10,500 during the year, you need only show under IDENTIFICATION . . . "practicing psychologist".

Investment Income

Items of investment income are reported on the same line of Schedule A as the related property interest or other asset from which such income is derived. Note that some property interests or other assets will not have a related income item.

Items to Report

Report the identity and category of value of any investment income received by you (or by your spouse or dependent child), or which accrued to your benefit (or to your spouse or dependent child), during the preceding calendar year in the case of incumbents in positions described in section II(c), or the preceding calendar year and the current calendar year until at least thirty days of the date of filing in the case of nominees, new entrants, and candidates to such positions (and in the case of termination reports). (Omit the preceding calendar year in the case of a termination report, if a previous annual filing has covered that year.) **Exclude items of income totaling under $100** from any one source.

Investment income includes, but is not limited to: income derived from dealings in property; interest; rents; royalties; dividends; annuities; income from endowment contracts; income from discharge (forgiveness) of debts owed by you; your distributive share of partnership or joint venture income; and income from an interest in an estate or trust. Do not show the exact dollar amount of the income, except in the case of "other investment income", item 6 below. In all other cases, indicate the category of amount of the item reported.

For your spouse or dependent child, report any investment income which they received or realized from any of the sources enumerated in the following items 1 through 6, provided the income derives from a property interest or asset which is being reported in Schedule A under the rules discussed below under that heading. Also report any income from a trust which is a qualified or excepted trust (the assets of which need not be disclosed). Report both the identification and the category of value of any such income they received during the calendar year.

What to Show on the Form

1. DIVIDENDS—Show the category of the amount **you, your spouse or dependent children** received as **dividends** from investment sources including: common and preferred securities, endowment contracts, and pension and annuity funds. **Show the identity of the source and the category of amount for each item exceeding $100 in value** from any one source.

   When identifying the source of a corporate stock dividend, you may abbreviate the corporate name. For example, if cash dividends of $950 were received for shares of common stock of International Business Machines, show under IDENTIFICATION . . . "IBM common", and in the CATEGORY OF AMOUNT column indicate the appropriate category.
2. RENTS AND ROYALTIES—Show income received by **you, your spouse or dependent children** as rental or lease payments for occupancy or use of personal or real property in which you (your spouse or dependent child) have an interest. In addition, show payments received from such interests as copyrights, royalties, inventions, patents, and mineral leases or other interests.

   Identify the source of such income and show the category of amount. For example, if you received $2,000 as rental income from an apartment building in Miami, Florida, show under IDENTIFICATION . . . "apartment building rent, at 5802 Biscayne Blvd., Miami, Florida"; and under CATEGORY OF AMOUNT indicate the appropriate category.
3. INTEREST—**Identify the source and the category of amount** of any interest earned or received by **you, your spouse or dependent child** as income from these investment holdings: bills and notes, loans, promissory notes, and annuity funds, bonds, and other securities. For example, if you earned $300 interest during the calendar year on a Savings Certificate with Federal Savings and Loan, show under IDENTIFICATION . . . "Federal Savings and Loan (Baltimore, MD) —Savings Certificate"; and under CATEGORY OF AMOUNT indicate the appropriate category.
4. CAPITAL GAINS—Report income from capital gains received or realized by **you, your spouse or dependent children** from sales or exchanges of property, business interests, partnership interests or shared ownership investment interests. **Identify the source and show the category of amount** of the gain. An example of an entry under IDENTIFICATION might be "sold for long-term capital gain one-third interest in 100-acre dairy farm in Hamilton County, Iowa"
5. TRUST INCOME—Report the **category of amount and the identity** of any income of $100 or more received from any trust. A reporting individual **need not** identify the

source from which the trust received the income when the trust is: (i) a "qualified blind trust" or "qualified diversified trust"; or (ii) an "excepted trust", one which was not created directly by, and about which no knowledge of holdings or source of income of the trust is possessed by, the reporting individual, spouse or dependent child. See subpart D of 5 CFR Part 734.

Whenever you are required to identify the source of trust income, either for yourself or for a spouse or child, it is not enough simply to say "John Jones Trust". The investment holdings of the trust and the income derived from each holding must be identified, if known, to the same extent as if held directly. If the trust qualifies as a qualified trust or an excepted trust, the assets of which need not be reported, under IDENTIFICATION . . . show only the identity of the trust including the date the trust was created, and the classification of the trust interest as a "qualified blind trust", "qualified diversified trust", or "excepted trust", and show the category of amount of the income realized.

6. OTHER INVESTMENT INCOME—**Report any items of investment income exceeding $100 which are not described above,** such as income from business interests, property dealings, annuities, an estate, or a distributive share of a partnership or joint business venture's income. To identify the source of OTHER INVESTMENT INCOME, either for yourself, your spouse, or a dependent child, briefly characterize, under IDENTIFICATION, the nature of the business or investment interest, and when applicable, the location: for example . . . "one-third ownership in a retail furniture store at 1010 Grand Ave., Chicago, IL". Show under CATEGORY OF AMOUNT the exact amount of income which was received or realized during the calendar year.

Property Interests and Assets

Report these items on the same line as any related income item (if any).

Items to Report

The identity and category of valuation of any interest in property (real or personal) held by **you, your spouse or a dependent child, in a trade or business, or for investment or the production of income** which has a fair market value which exceeds $1,000 as of the close of the reportable period. Exclude your personal residence and any personal liability owed to you, your spouse or dependent child by a relative. Exclude also any deposits aggregating $5,000 or less in a personal savings account in a single financial institution. Report all such interests held at any time during the preceding calendar year in the case of an incumbent in a position described in section II(c) of these instructions, or at any time during the preceding calendar year and the current calendar year until at least thirty days before the date of filing in the case of a nominee, new entrant, or candidate to such a position (until the date of filing in the case of termination reports). (Omit the preceding calendar year in the case of a termination report, if a previous annual filing has covered that year.) A personal savings account includes a "certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union or similar institution". With respect to assets of a spouse or a dependent child, do not report items:

i. which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of;
ii. which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual; and
iii. from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

The non-inclusion in the report of assets of a spouse or dependent child certified to meet the tests above is indicated by checking the "YES" box in the portion of Schedule A which relates to this certification.

What to Show on the Form

Identify the property interest under IDENTIFICATION and then show the applicable value under VALUATION OF ASSETS. **Only the category of valuation, rather than the actual value of the property interest or asset,** must be shown.

Valuation Method

The statute provides several methods for determining **valuation.** In the column printed on the form for Valuation Method indicate which method you used. This may be done by entering the applicable letter code symbol for that option as follows:

Option A—any good faith estimate of the value of the property if the exact value is unknown or not easily obtainable;
Option B—value based upon a recent appraisal of the property interest;
Option C—the date of purchase and the purchase price of your interest;
Option D—the assessed value of the property for tax purposes adjusted to reflect current market value if the tax assessment is computed at less than 100% of current value (if Option D is used, describe the manner in which you adjusted the assessed value);
Option E—the year-end book value of non-publicly traded stock, or the year-end exchange value of corporate stocks, or the face value of corporate bonds, or comparable securities;
Option F—the net worth of your interest (as in a business partnership or other jointly held business interest);
Option G—the equity value of your interest (as in a solely owned business or commercial enterprise); and
Option H—actual value (e.g., savings accounts) or any recognized indication of value (such as last sale on a stock exchange).

For assets such as stocks, bonds, and securities, report any holdings **by you, your spouse or dependent child** from one source totaling more than $1,000 in value **identify the holding and show the category of valuation.** When identifying shares of publicly traded stocks, the name of the corporation may be abbreviated. If you have stock interests, through an investment trust or mutual fund, and the holdings of the trust or fund are a matter of public record, you may—instead of identifying the fund's share holdings—identify your interest by simply giving the name of the trust or mutual fund. If you hold different types of securities of the same corporation (e.g., bonds and stocks of "X" corporation), these holdings should be considered as being from the same source for purposes of determining whether the aggregate value of the interest is below or above the $1,000 value.

To report interests in a business, a partnership, or joint venture, or the ownership of property held for investment or the production of income, identify the character of your ownership interest, and the nature and location of the business or interest. Thus, in the case of non-publicly traded securities, show the nature and address of the business (in addition to its name). Show the valuation method option by which the value of the interest was determined and show, under VALUATION OF ASSETS, the applicable value. For example, the entry for a holding of farm land might show, under IDENTIFICATION . . . "sole ownership of 100 acres of unimproved dairy farm land on Rural Route #1 at Pine Bluff, Madison County, Wisconsin". Give the code symbol for the valuation method option used to determine the property's value and such additional information as the valuation option requires. For example, if the code for Option C was shown in the above case, an additional entry under IDENTIFICATION might appear as "purchased in 1965 for $500 per acre."

In the case of personal property such as antique collections and related holdings, the Office of Government Ethics deems intermittent sales from such a collection or holdings to demonstrate that they are held for investment or the production of income.

A personal residence should not be reported as a property interest because it is **not** held for investment or production of income. However, if you hold residential property which is used for investment or income purposes, such as a summer home rented during parts of the year, you would report that interest in this section.

Also, with respect to trusts in which a beneficial interest in principal or income is held, report trust interests and trust assets which had a value in excess of $1,000. Reporting individuals need not report the identity of assets of a trust of which they are the beneficiary if the interest is:

i. a "qualified blind trust" or "qualified diversified trust", or
ii. an excepted trust", one which—
   A. was not created by them, or their spouses or dependent children, and
   B. the holding or sources of income of which they, their spouses and dependent children, have no knowledge.

In such cases, in lieu of disclosing the source and assets of the trust, a reporting individual should show under IDENTIFICATION the identity of the trust including the date the trust was created, and the classification of the trust interest as a "qualified blind trust", a qualified di-

ed trust", or an "excepted trust". ugh a **reporting individual need not report entity of the assets of a qualified or ex- d trust, the category of amount of the income, if it exceeded $100, must be ed.**

not necessary to identify those assets of f which a spouse or dependent child is iciary:

ch the reporting individual certifies esent the spouse or dependent child's financial interest or responsibility and ch the reporting individual has no knowl- e of;

ch are not in any way, past or present, ed from the income, assets, or activi- of the reporting individual; and

which the reporting individual neither es, nor expects to derive, any financial onomic benefit.

investment holdings of a trust, except scribed above, must be identified. For , under IDENTIFICATION such an entry t held by First National Bank (Boston, sisting of ITT stock, U.S. Treasury cer- s, and Dallas Municipal Bonds" might n. Under VALUATION OF ASSETS . . . e applicable value of each trust asset.

edule B

hases, Sales, and Exchanges

o Report

a brief description, the date, and the y of amount of any purchase, sale or ex- during the preceding calendar year xceeds $1,000 affecting real property, bonds, commodities futures, and other securities. Purchases, sales, and ex- are reportable only by incumbents in s described in section II(c). This re- nt is not applicable in the case of es, new entrants, and candidates to positions. In the case of termination , such transactions are reportable for ding calendar year (unless covered by us annual filing) and the current calen- r until the date of filing. Report any trans- by **you, your spouse or dependent child** (i) it involved the personal residence of your spouse; (ii) it was a transaction of your spouse or child with respect to property which you certify on Schedule A represents the sole financial interest or responsibility of the spouse or child, and about which you have no knowledge, and which is not related to your income, assets, or activities, and concerning which you neither derive nor expect to derive any financial or economic benefit.

Report any transactions of a business or commercial enterprise in which you, your spouse or dependent child have a direct proprietary or general partnership interest.

What to Show on the Form

Under identification of property, identify the property or securities involved in the purchase, sale, or exchange; and give the date of the transaction. For example, under IDENTIFICATION OF PROPERTY . . . "GMC common stock". Under TYPE OF TRANSACTION . . . check "purchase" and indicate the date. Under CATEGORY OF AMOUNT . . . show the applicable value of the property involved in the transaction.

Schedule C

Gifts and Reimbursements

Items to Report

Gifts and reimbursements are reportable only by incumbents in positions described in section II(c). This requirement is not applicable in the case of nominees, candidates, and new entrants to such positions.

Report gifts received by **you, your spouse or dependent child** during the preceding calendar year. In the case of termination reports, such items are reportable if received during the preceding calendar year (unless covered by a previous annual filing) and the current calendar year until the date of filing. A "gift" means any payment, advance, rendering or deposit of money or anything of value, unless consideration of equal or greater value is received by the donor. Exclude these items:

i. Gifts having a value of $35 or less;
ii. Gifts received from relatives;
iii. Bequests and other forms of inheritance;
iv. Suitable mementos of a function honoring the reporting individual;
v. Food, lodging, transportation, and entertainment provided by a foreign government **within a foreign country** or by the United States Government.
vi. Food and beverages consumed at banquets, receptions or similar events;
vii. Gifts of food, lodging, transportation and entertainment aggregating less than $250 in value received from any one source during the preceding calendar year (for purposes of the $250 aggregation in this exclusion, items with a fair market value of $35 or less need not be counted);
viii. Gifts (other than transportation, lodging, food or entertainment) aggregating less than $100 in value received from any one source (for purposes of the $100 aggregation in this exclusion, you need not count any items with a fair market value of $35 or less, nor any item for which, in an unusual case, a publicly available request for waiver was granted);
ix. Gifts given to a spouse or dependent child totally independent of their relationship to the reporting individual;
x. Gift items in the nature of communications to the reporting individual's office, such as subscriptions to newspapers and periodicals; and
xi. Gifts of hospitality on the donor's personal premises, as defined in 5 CFR §734.105(i); and
xii. Gifts and reimbursements received during non-Federal employment periods.

Report also reimbursements of expenses aggregating $250 or more in value that were received by **you or your spouse.**

What to Show on the Form

1. TRANSPORTATION, LODGING, FOOD, ENTERTAINMENT—Report the identity of **the source, a brief description, and the approximate value,** of gifts of transportation, lodging, food or entertainment aggregating $250 or more from any one source which were received by **you, your spouse or dependent child** and which do not fall within any of the categories of exclusions enumerated above. To reach a $250 aggregation you determine whether any one or combination of the components within this gift category received from one source (transportation, lodging, food and entertainment) amounts to $250 or more in value. For example, if you spent a weekend at a hunting lodge owned by AmCoal Corporation, and you received lodging fairly valued at $150, food at $100, and entertainment at $125, the aggregate value of the gift is $375. A gift of this nature—hospitality at a lodge owned by a corporation rather than an individual—would not qualify as a "personal hospitality" exclusion. To report this gift you would show, under SOURCE . . . "AmCoal Corp., 1210 North St., Chicago, IL"; under BRIEF DESCRIPTION . . . "lodging, food, and entertainment as a guest at hunting lodge owned by AmCoal"; and under VALUE . . . "$375".

2. OTHER GIFTS—Report the identity of the **source, a brief description, and the value** of gifts other than transportation, lodging, food or entertainment aggregating $100 or more in value from any one source, other than excluded gifts which **you, your spouse or dependent child** received during the calendar year. Thus, if you and your spouse each receive a $60 statute from the same donor, the gift has a value of more than $100, and it must be reported. To report the gift, identify the source, briefly describe the items, and show the value. In the case of the statues, report on the form, under SOURCE . . . "Artifact Co., 153 Utah St., Omaha, NE"; and under BRIEF DESCRIPTION . . . "two porcelain statues". Under VALUE . . . "$120" would be shown.

3. REIMBURSEMENTS—**Report the source and the approximate value** of any reimbursements (except those from the United States Government) aggregating $250 or more which **you, your spouse or dependent child** received from any one source. For example, if you were reimbursed $400 for travel and lodging expenses in connection with a speech you made for the State Realtors Association, you would report this item on the form by showing under SOURCE . . . "State Realtors Assoc., 45 Bridge St., Denver, CO"; under BRIEF DESCRIPTION . . . "travel expenses for speech made in Denver"; and under VALUE . . . "$400" would be shown. If your spouse made this speech and received the reimbursement totally independent of a relationship to you, no information for this item need be reported.

BEST AVAILABLE COPY

Schedule D

Liabilities

Items to Report

Identify and give the category of amount of the liabilities which **you, your spouse or dependent child** owed to any creditor, other than a relative, which exceeded $10,000 at any time during the reportable period, except:

i. a mortgage secured by real property which is the personal residence of you or your spouse;
ii. a loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item;
iii. a revolving charge account the outstanding liability of which did not exceed $10,000 as of the close of the preceding calendar year; and
iv. any liability of your spouse or dependent child which you certify represents the sole financial interest or responsibility of the spouse or child, and about which you have no knowledge, and which is not related to your income, assets, or activities, and concerning which you neither derive nor expect to derive any financial or economic benefit.

In the case of incumbents in positions described in section II(c) report all liabilities owed at any time during the preceding calendar year. In the case of nominees, new entrants, and candidates to such positions report all liabilities owed at any time during the preceding year and the current calendar year until at least thirty days before the date of filing (until the date of filing in the case of termination reports). Omit the preceding calendar year in the case of a termination report, if a previous annual filing has covered that year. Include any business liabilities for which you, your spouse or dependent child are under legal obligation, such as those of a partnership or other business or commercial enterprise, in which your participation or ownership interest extends to personal liability for its debts.

What to Show on the Form

Under TYPE OF LIABILITY . . . briefly indicate the nature of the liability, and the identity of any property or asset which secures it. For example, under NAME AND ADDRESS OF CREDITOR . . . "Fidelity Trust. Co., 5330 Main St., Akron, OH"; and under TYPE OF LIABILITY . . . "8%, 6-mo. promissory note of 8/6/80 secured by ITT common stock" might be entered. Under CATEGORY OF AMOUNT, show the highest amount owed during the reportable period.

Positions Held

Items to Report

In the case of nominees, new entrants, and candidates to positions described in section II(c), report in this section all positions you held during the preceding two calendar years and the current calendar year at any time until the date of filing. In the case of incumbents in such positions and termination reports, report all positions held at any time during the preceding calendar year and the current calendar year until the date of filing. In addition, in all cases report any positions you currently hold as an officer, director, trustee, partner, proprietor, representative, employee or consultant of (i) any corporation, company, firm, partnership, trust, or other business enterprise; (ii) any non-profit organization; (iii) any labor organization; (iv) any educational institution; or (v) other institution other than the United States Government. Exclude positions held in (A) any religious, (B) social, (C) fraternal, or (D) political entity, and (E) any positions solely of an honorary nature. **No report is required regarding any positions held by your spouse or dependent child.**

What to Show on the Form

Under POSITION HELD . . . give the title or other brief functional description of the position.

Compensation in Excess of $5,000 Paid by One Source

Items to Report

In the case of new entrants, nominees, and candidates to positions described in section II(C) (but not in the case of incumbents in such positions or termination reports) report the nature of the duties performed or services rendered for any person (other than the United States Government) from whom you received compensation in excess of $5,000 in any of the two preceding calendar years. This reporting requirement is not applicable in the case of candidates for President or Vice-President. Exclude: (i) information to the extent that it is considered confidential as a result of a privileged relationship established by law, or (ii) information about persons for whom services were provided by a firm or an association of which you were a member, partner or employee unless you were directly involved in the provision of the services. **No report is required regarding compensation paid to your spouse or a dependent child.**

What to Show on the Form

Under SOURCE . . . give the name and address of the person to whom services were provided, for example, "Anglo-Bahrain Bank (Zurich, Switzerland) and Newark Real Estate Co. (Newark, NJ)"; and under BRIEF DESCRIPTION . . . the title or other brief functional description of the services rendered, for example: "tax matters researched for above firms while an associate with Quinn & Ouspensky."

Relations With Other Employers

Items to Report

All reporting individuals shall provide information regarding any agreements or arrangements concerning (i) future employment; (ii) a leave of absence during your period of Government service; (iii) continuation of payments by a former employer (including a former affiliation with a law firm) other than the United States Government; and (iv) continuing participation in an employee welfare or benefit plan maintained by a former employer.

What to Show on the Form

Under DATE . . . show the date of any such agreement or arrangement. Under PARTIES . . . . show the name of the organization, or entity, and (if applicable) the name and title of the official, corporate officer, or principal person responsible for carrying out the terms of the agreement or arrangement. **No report is required regarding any agreement or arrangement entered into by a spouse or dependent child.**

SF 278 (Rev. 6/81)
FPM Chapter 734
U.S. Office of Personnel Management

FINANCIAL DISCLOSURE REPORT

Form Approved
OMB No. 3206-0092

Reporting Status *(Check Appropriate Box)*			NOTE
☐ Incumbent	☐ New Entrant, Nominee, or Candidate	☐ Termination Report	All schedules must be filed. Enter "None" in areas or across schedules where appropriate.

Agency Use Only	OGE Use Only
Date of Filing *(Month, Day, Year)*	

Reporting Individual's Name	Last Name	First Name and Middle Initial		
Position for Which Filing	Title of Position	Department or Agency *(If Applicable)*	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*	Termination Date *(If Applicable) (Month, Day, Year)*
Location of Present Office	Address *(Number, Street, City, State and Zip Code)*		Room Number	Telephone No. *(Include Area Code)*

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?	
		☐ Yes	☐ No

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held

Certification	Signature of Reporting Individual	Date *(Month, Day, Year)*
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.		

Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
The information contained in this report discloses no conflict of interest under applicable laws and regulations.		
Office of Government Ethics Use Only ➤	Signature	Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

BEST AVAILABLE COPY

SF 278—Financial Disclosure Report
(Rev. 8/81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust? (Yes / No) or "qualified" trust?		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		

If "Yes," do you certify to all of the following?

1. They represent solely your spouse's or dependent child's financial interest or responsibility;
2. They are not, in any way, past or present, derived from your income, assets, or activities;
3. You neither derive, nor expect to derive, any financial or economic benefit from them; **and**
4. You do not have knowledge as to the composition of such interest or liabilities.

	Yes	No

Page Number ➤ _____ Schedule A

Reporting Individual's Name

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income: Type of Income (✓)							Income: Category of Amount or Value (✓)											Interests in Property: Valuation of Assets (✓)							
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount (Only if "Other" Specified)	Date (Mo., Day, Yr.) (Only if Honoraria)	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000

BEST AVAILABLE COPY

PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number		Schedule B

Reporting Individual's Name

Agency Use Only

Date of Filing *(Month, Day, Year)*

Report Applicable Transactions, Even If Also Reported on Schedule A

[illegible]	Description of Property (real and personal)	Type of Transaction			Date *(Month, Day, Year)*		Category of Amount or Value (✓)					
		Purchase	Sale	Exchange	Purchase	Sale or Exchange	$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

BEST AVAILABLE COPY

SF 278—Financial Disclosure Report
(Rev. 6/81)

GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

Page Number		Schedule C
Reporting Individual's Name		
Agency Use Only		
Date of Filing *(Month, Day, Year)*		

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*			
S or DC	Source *(Name and Address)*	Brief Description	Value

II—All Other Gifts—*List each source totaling $100 or more in value*			
S or DC	Source *(Name and Address)*	Brief Description	Value

III. Reimbursements—*List each source totaling $250 or more in value*			
S	Source *(Name and Address)*	Brief Description	Value

SF 278—Financial Disclosure Report
(Rev. 6/81)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing *(Month, Day, Year)*	Page Number ➤		Schedule **D**

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability *(e.g., promissory note, margin account)* Give date, interest rate and, if applicable, term	Category of Amount or Value (✓)				
			$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source *(Name and Address)*	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date *(Mo., Day, Yr.)*

☆ GPO : 1981 O - 340-453 (30)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(For Use By Government Employees)

1. NAME (last, first, initial)	2. TITLE OF POSITION

3. DATE OF APPOINTMENT IN PRESENT POSITION	4. AGENCY AND MAJOR ORGANIZATIONAL SEGMENT OR POST

PART I. EMPLOYMENT AND FINANCIAL INTERESTS. List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE.

NAME & KIND OF ORGANIZATION (Use Part I Designations Where Applicable)	ADDRESS	POSITION IN ORGANIZATION (Use Part I(a) Designations, if Applicable)	NATURE OF FINANCIAL INTEREST, e.g., STOCK, PRIOR BUSINESS INCOME. (Use Part 1(b) & (c) Designations, if Applicable)

PART II. CREDITORS. List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e.g., PERSONAL LOAN, NOTE, SECURITY

PART III. INTERESTS IN REAL PROPERTY. List your interest in real property or rights in lands, other than property which you occupy as a personal residence. In none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT FARM, UNDEVELOPED LAND	ADDRESS (If Rural, Give RFD or County and State)

PART IV. INFORMATION REQUESTED OF OTHER PERSONS. If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date) *(Signature)*

50106-102 *(When completed, submit in sealed envelope to your Agency Counselor - Sec. 10.735-102)*

OPTIONAL FORM 106 (Rev. 12-77)
STATE-AID-USIA

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTEREST

For use by an officer or employee as required by section 402 of Executive Order 11222, dated May 8, 1965, Prescribing Standards of Ethical Conduct for Government Officers and Employees.

GENERAL REQUIREMENTS.

The information to be furnished in this statement is required by Executive Order 11222, the regulations of the Civil Service Commission and the joint regulations of the Department of State, the United States Information Agency and the Agency for International Development issued thereunder.

The Order does not require the submission of any information relating to an employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

In the event any of the required information, including holdings placed in trust, is not known to you but is known to another person, you should request that other person to submit the information on your behalf and should report such request in Part IV of your statement.

The interest, if any, of a spouse, minor child, or other member of your immediate household shall be reported in this statement as your interest. If that information is to be supplied by others, it should be so indicated in Part IV. "Member of your immediate household" includes only those blood relations who are full-time residents of your household.

If you report any outside employment or financial interests, the regulations require that this statement be accompanied by a full description of your principal official duties.

The description should be particularly detailed in regard to those duties that might possibly be an element in a conflict of interests.

PRIVACY ACT STATEMENT

This information is solicited under authority of Executive Order No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Executive Order No. 11590, April 23, 1971, 36 F.R. 7831.

The primary purpose for which the information is intended is to determine whether the financial and other outside interests of Government employees and special Government employees might result in, or create the appearance of a conflict of interest with their duties as Federal employees.

Disclosure of information provided will not be made except as the Chairman of the Civil Service Commission or the head of the Agency concerned may determine for good cause shown.

Failure to furnish the requested information may result in refusal of the Department to provide the initial or annual conflict of interest clearance necessary for employment.

☆ U.S. GOVERNMENT PRINTING OFFICE : 1977 O—260-453(2)

AID 4-450 (12-76)

AGENCY FOR INTERNATIONAL DEVELOPMENT

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

(For Use by Special Government Employees)

PART I – TO BE COMPLETED BY AGENCY

1. NAME *(Last, First, Initial)*

2. ORGANIZATIONAL SEGMENT WITHIN A.I.D.

3. BIRTH DATE *(Month, Day, Year)*

4. PERIOD OF APPOINTMENT WITH THIS AGENCY

From: To:

5. A. Estimated Number of days on which services are expected to be performed:

(1) With this Agency . . . . . _____

(2) With other Federal Agencies . . . . . _____

Total of (1) and (2) . . . . . _____

B. Number of days already worked for this and other Federal agencies during applicable 365-day period . . . . . _____

C. Total number of days (Sum of A. and B.) . . . . . _____

PART II – TO BE COMPLETED BY APPOINTEE

1. FEDERAL GOVERNMENT EMPLOYMENT: List all other Federal agencies and other organizational segments of this Agency in which you are presently employed. If none, write NONE.

AGENCY AND LOCATION	TITLE OR KIND OF POSITION	APPOINTMENT PERIOD		ESTIMATED NUMBER OF DAYS
		FROM	TO	

2. NON-FEDERAL EMPLOYMENT AND REPRESENTATION ACTIVITY: Name all corporations, companies, firms, government organizations (State, Local or Foreign), research organizations, and educational or other institutions (a) in which you are serving as employee, officer, member, owner, trustee, director, expert, adviser or consultant, with or without compensation; or (b) for which you are presently acting as agent in connection with any matter pending before this Agency. If none, write NONE.

NAME AND KIND OF ORGANIZATION *(e.g., Manufacturing, Research, Insurance)*	LOCATION *(City, State)*	TITLE OR KIND OF POSITION, OR DETAILS AS TO REPRESENTATION

3. FINANCIAL INTERESTS: Name all corporations, companies, firms, or other business enterprises in which you, your spouse, minor child or other blood relatives who are residents of your household have any financial interest through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. The particular amount of financial interest need not be listed. If none, write NONE.

NAME OF ORGANIZATION	KIND OF ORGANIZATION *(Manufacturing, Storage, Public Utilities, etc.)*	NATURE OF INTEREST AND IN WHOSE NAME HELD

4. FOREIGN AGENTS REGISTRATION ACT: Are you a registrant, or are you required to register, as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, as amended. ☐ Yes ☐ No. If yes, give details as to registration on the reverse side of this form.

I CERTIFY that the statements I have made are true, complete, and correct to the best of my knowledge and belief. I UNDERSTAND that if, during the period of my appointment, I undertake a new employment, I must promptly file an amended statement, and I must also report any new financial interests acquired during this period.

_____ DATE

_____ SIGNATURE

The information on this statement may not be disclosed except as the Administrator may determine for good cause shown.

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTEREST

For use by an officer or employee as required by Section 402 of Executive Order 11222, dated May 8, 1965, Prescribing of Ethical Conduct for Government Officers and Employees.

GENERAL REQUIREMENTS

The information to be furnished in this statement is required by Executive Order 11222, the regulations of the Civil Service Commission and the Joint Regulations of the Department of State, the United States Information Agency and the Agency for International Development issued thereunder and may not be disclosed except as the agency head may determine for good cause shown.

The Order does not require the submission of any information relating to an employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

The information to be listed does not require a showing of the amount of financial interest, indebtedness, or the value of real property.

In the event any of the required information, including holdings placed in trust, is not known to you, but is known to another person, you should request that other person to submit the information on your behalf and should report such request in Part IV of your statement.

The interest, if any, of a spouse, minor child, or other member of your immediate household shall be reported in this statement as your interest. If that information is to be supplied by others, it should be so indicated in Part IV "Member of your immediate household" includes only those blood relations who are full-time residents of your household.

If you report any outside employment or financial interest, the regulations require that this statement be accompanied by a full description of your principal official duties.

The description should be particularly detailed in regard to those duties that might possibly be an element in a conflict of interests.

PRIVACY ACT STATEMENT

The following statement is required to be included on the subject form by the Privacy Act of 1974 (Public Law 93-579; 88 Statute 1896):

This form is used to determine whether the financial and other outside interests of special Government Employees constitute a potential or actual conflict of interest with their duties as special Government employees. Furnishing of this information is required by Section 402 of Executive Order 11222, issued May 8, 1965. Failure to furnish the requested information will result in refusal of the Agency to provide conflict of interest clearance, which is necessary for employment.

Disclosure of information provided will not be made outside the Agency without the written consent of the employee concerned except (a) pursuant to any applicable routine use listed under AID's Employee Conduct and Discipline Records System, AID-11 in AID's Notice of Systems of Records or (b) when disclosure without the employee's consent is authorized by the Privacy Act and provided for in AID Regulation 15. (A copy of the Regulation and Notice of Systems of Records is available from AID Distribution on request.)

ATTACHMENT 2K

TITLE V—POST EMPLOYMENT CONFLICT OF INTEREST

SEC. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:

18 USC 207.

"§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in

which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to— Penalty.

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(d) Subsection (c) of this section shall apply to a person employed—

"(1) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority; 5 USC 5301.

"(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who has significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned;

"(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of O-7 or above as described in section 201 of title 37, United States Code; or

"(4) in a position designated by the Director of the Office of Government Ethics. Within twelve months from the date of enactment of this subsection, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph. Departments and agencies, cooperation.

"(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory Rule.

agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

Consultation. Publication in Federal Register.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

Penalty.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

Notice, hearing opportunity.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except

the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.". Departments and agencies, consultation.

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows: 18 USC 201.

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.".

APPLICABILITY

SEC. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation. 18 USC 207 note.

EFFECTIVE DATE

SEC. 503. The amendments made by section 501 shall become effective on July 1, 1979. 18 USC 207 note.

ATTACHMENT 2L

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 737

Post Employment Conflict of Interest

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is revising the regulations implementing the restrictions on post employment activity established by Title V of the Ethics In Government Act of 1978. These regulations provide specific guidance to the executive agencies in exercising the administrative enforcement authority; and establish the procedures for making certain determinations and designations under the Act.

EFFECTIVE DATE: March 3, 1980.

FOR FURTHER INFORMATION CONTACT: H. Lawrence Garrett at (202) 632-7642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations to supplement and particularize the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978 ("the Act"). Interim regulations were published in the Federal Register on April 3, 1979 (44 FR 19974–19988). Changes have been made to conform to the amendments made to 18 U.S.C. 207 by Pub. L. 96–28, signed into law on June 22, 1979. In addition, editorial revisions and other changes have been made in order to simplify and clarify the regulations.

(1) Major Revisions

The following summarizes those provisions of the interim regulations that were changed to reflect the amendments made to Title V of the Act by Pub. L. 96–28.

A. The Subsection 207(b)(ii) Prohibition (§ 737.9)—Assistance in Representation

The language of the Act, as originally enacted, prohibited those designated as Senior Employees from providing assistance in representing any person, other than the United States, "concerning" any formal or informal appearance. The original language was not thought to accurately reflect the intention of Congress in that it allowed for two possible but clearly unintended interpretations: (i) that certain otherwise legitimate activities connected with the management of grants and contracts were barred, and (ii) that the "assistance in representing" bar extended both to matters in which the former Senior Employee had personally and substantially participated and matters which, although not having personally and substantially participated in them, had been actually pending under his/her official responsibility. The amendments to the Act provide that 18 U.S.C. 207(b)(ii) applies only to that assistance given within two years after leaving Government service, by "personal presence" at an appearance before the Government—for example, a negotiation or proceeding. The amendments further provide that this two-year bar applies only to matters in which the former employee had "personally and substantially" participated.

B. Limitation of Subsection 207(c) Prohibition (§ 737.11)

Subsection 207(c), as added by the Act, prohibits for one year an appearance by a former Senior Employee before his or her former department or agency. However, 18 U.S.C. 207(e), also added by the Act, in most cases removes that prohibition with respect to an appearance of such an individual before a separate statutory agency or bureau (other than the one he had served) within the parent department or agency.

Amendments to 18 U.S.C. 207(d) enacted by Pub. L. 96–28 give the Director of the Office of Government Ethics ("OGE") the authority to further limit the application of the one-year "cooling-off" bar mentioned above. More particularly, although a former Senior Employee will continue to be prohibited from contact with those non-statutory segments of his or her former department or agency where there is potential for unfair influence, he or she may be permitted appearances before "separate and distinct" components of the former department or agency where there exists no such potential. The new permission is not, however, available for those former Senior Employees who held Executive Level positions or for members of the uniformed services who served in pay grades 0–9 and 0–10. Unlike the provisions of 18 U.S.C. 207(e) regarding separate statutory agencies, those of 18 U.S.C. 207(d) make its benefit available in some instances to the former head of a separate component.

The amendments of Pub. L. 96–28 also make the prohibitions of subsection (c) of 18 U.S.C. 207 inapplicable to appearances, communications or representations made by a former Senior Employee who is an elected representative of a State or local government, or a regular employee of (i) such a government, (ii) a non-profit hospital or medical research institution, or (iii) a degree granting institution of higher education. Such appearances, communications or representations must be made on behalf of such governments or specified organizations in order to be exempt.

C. Modification of Senior Employee Designations (§ 737.25)

Under the original provisions of 18 U.S.C. 207(d)(3) all active duty commissioned officers of a uniformed service assigned to pay grade 0–7 and above were automatically designated by statute as Senior Employees for purposes of subsections (b)(ii) and (c) of 18 U.S.C. 207.

The amendments of Pub. L. 96–28 added a new provision (207(d)(1)(C)) which equalized the treatment of uniformed service officers, in relation to civilian personnel, by specifying that officers serving in pay grades 0–7 and 0–8 shall be made subject to the special restrictions for Senior Employees—(i.e., the two-year assistance bar (207(b)(ii)) and the one-year bar against doing business with one's former agency (207(c))—only if they held positions of "significant decision-making or supervisory responsibility" as designated by the Director, OGE.

Finally, the amendments restricted the civilian employee positions which may be designated, by the Director, OGE, as subject to the special restrictions for Senior Employees, to those positions for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17, or which are established in the Senior Executive Service. Essentially, the amendments codify the policy reflected in OPM's interim regulations published on April 3, 1979 (44 FR 19986).

(2) Analysis of Comments

The interim regulations provided a 45 day period for public comment. OPM received comments from 28 agencies, two law firms and two labor organizations. A number of the comments offered specific recommendations for clarifying or modifying specific provisions of the interim regulations. OPM has proposed modification of certain of the regulations, as discussed below. In addition, guidance issued through the Federal Personnel Manual System will address certain other concerns expressed during the public comment period.

A. General

Two commenters asked that the regulations specifically state that Part 737 does not incorporate or supplant restrictions contained in other laws and regulations or in professional codes of

conduct. The recommendations were adopted and incorporated in the final regulations.

Only one commenter felt that, since 18 U.S.C. 207 can be enforced criminally, it was inappropriate for OPM to propound a definitive interpretation of its provisions, and that OPM should state that it is only providing an advisory interpretation. We believe, however, that it would be inappropriate to require Federal employees to make decisions regarding continued employment with the Government on the basis of unclear constraints or otherwise require them to act at their peril. Congress prescribed a relationship between OPM and the Department of Justice, giving the Director, OGE, the responsibility for developing regulations in consultation with the Attorney General. As to matters involving criminal proscriptions, it was decided early that these regulations should have the concurrence of the Attorney General so as to avoid the anomalous result that a particular activity might be viewed as triggering no administrative enforcement, while possibly triggering criminal enforcement. While criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General, the Attorney General has advised that these regulations are consistent with his interpretation for criminal enforcement responsibilities.

One commenter observed that it seems improper to have agencies advise present and former emloyees as to the requirements of the Act, when agencies also have an obligation to report alleged violations of law to the Department of Justice. (28 U.S.C. 535) OPM sees no such impropriety, but rather regards it the duty of such agencies to advise their employees so as to cause their conduct to conform to the law.

One commenter questioned the absence of any provision in the regulations dealing with a case in which a high-ranking Government official, who awarded a major contract to a private entity, is subsequently hired by the private entity. The regulations do not contain such a provision because the Act does not prohibit such employment, but only restricts the post employment representational activity of a former Government employee in relation to such a contract. Another commenter raised the situation of a former private sector employee, who, as a Government official, awards a contract to his or her former employer. Such a situation is not subject to the provisions of 18 U.S.C. 207 or these regulations, but might trigger 18 U.S.C. 208, given a current interest by such an employee.

One commenter asked for a clarification of when self-representation is permitted under subsections 207 (a), (b) and (c). Self-representation is generally permitted under subsections 207 (a) and (b). OPM will publish Federal Personnel Manual guidance periodically concerning self-representation, and OGE will publish formal advisory opinions concerning self-representation.

It was observed in one comment that since OMB Circular A-76 provides that a contractor must give the right of first refusal for jobs contracted out by an agency to Federal employees, the regulations should address the section 207 problems which might arise. OMB Circular A-76 further provides that the right of first refusal would apply only when consistent with the post employment conflict of interest standards. These regulations, in part, establish the standards controlling whether or not the right of first refusal would apply to a given situation.

B. Definitions

One commenter asked that the regulations be revised to make clear that an independent contractor could never be a "special Government employee" and another asked that it be made clear that a consultant could come within the definition. The definition of "special Government employee" has incorporated the essence of such recommendations.

One comment asked for technical clarifications of the term "Government employee" and questioned the appropriateness of applying the "supervised by" requirement, incorporated by reference to 5 U.S.C. 2104 and 2105, to that term. The Director, OGE, does not consider that the "supervised by" requirement found in 5 U.S.C. 2104 and 2105 contemplates direct supervision by the appointing official in order to find one to be an "officer" or "employee" as defined in sections 2104 and 2105; rather, the requirement encompasses supervision in the broader sense by Federal employees within the department or agency within which they serve.

C. Restrictions on Any Former Government Employee's Acting as Representative as to a Particular Matter in Which the Employee Personally and Substantially Participated

For purposes of § 737.5(b)(3), the act of conveying material to the United States in connection with a formal proceeding or application may be deemed to constitute an "appearance." There was a suggestion in one comment that the scope of this concept be broadened. Another commenter specifically mentioned that the use of the word "appearance" in Example 1 of § 737.5(b)(3) too narrowly construed the meaning of section 207(a) of title 18 U.S.C. OPM considers the provisions to be consistent with the statutory language.

With respect to what constitutes a "particular matter" for purposes of § 737.5(c)(1), one commenter felt that the term should not be deemed to include the formulation of standard terms to be used in contracts to which the Government is a party. The commenter further urged that as to a specific contract, the validity or meaning of standard terms should not be considered as aspects of the particular matter embodied in the contract in which there was substantial participation—but, should be considered merely ancillary under § 737.5(d)(2). Likewise, it was argued that an attorney who passed upon the legality, as opposed to the desirability, of a particular matter's outcome has dealt with only an ancillary aspect of the matter. This same comment was made with respect to § 737.7(b)(3). The recommendation that formulation of standard terms or clauses to be used generally in contracts not be considered a "particular matter" is appropriate under the statute and has been incorporated in the final regulations. OPM considers that advice concerning the validity or meaning of a standard term or clause embodied in a specific contract is an aspect of the "particular matter" and not merely ancillary under § 737.5(d)(2). Moreover, passing upon the legality, as opposed to the desirability, of a particular contract by an attorney does not constitute involvement with an ancillary aspect of a matter but is, rather, involvement which cannot reasonably be separated from the substantive merits of the particular matter. The final regulations do not, therefore, incorporate the recommendation that such involvement be considered merely ancillary.

An objection was raised in one comment as to the formulation of § 737.5(c)(3) with respect to contractual matters. It was urged that involvement in the preliminary dialogue concerning the subject matter of a contract should not be deemed to constitute the same "particular matter" as that enbodied in the executed contract. The text of the final regulations has been altered to further refine the concept concerning the relationship of personal participation to the specificity of a particular matter. In order for such participation to rise to the

level of participation in a particular matter there must be more than the involvement in mere speculative discussion in the formative stages of a matter.

One commenter asked for more detailed guidance as to when a lawsuit, to which the United States is not a party, may be of direct and substantial interest to the United States or to a particular Federal agency for purposes of §§ 737.5(c)(5) and 737.11(e). Such guidance will be published through the formal advisory opinion service on a case-by-case basis.

One commenter felt that there should be some indication of the circumstances in which personal participation should not be deemed "substantial" participation. Such guidance is provided in § 737.5(d).

D. 2-Year Restriction on Any Former Government Employee's Acting as Representative as to a Particular Matter for Which the Employee had Official Responsibility

One commenter felt that an employee should not be considered to have "official responsibility" over that aspect of a particular matter which involves the non-discretionary use of standard contract terms. It was urged that this be considered an ancillary matter under § 737.7(b)(3). OPM believes that if the issue arises in relation to a specific contract then such an aspect would be considered as part of the "particular matter" and not merely ancillary.

One commenter questioned the use of the "actually pending" rule as it is employed in § 737.7(c), and suggested a reformulation of this concept. The concept is accurate as presented; further guidance will be promulgated on a case-by-case basis through the formal advisory opinion service.

It was suggested, correctly, in one comment that the conclusions reached in Example 1 of § 737.7(e) are inconsistent with the rules given in the text. The text of the final regulation has been revised to remove the inconsistency.

E. 2-Year Restriction on a Former Senior Employee's Assisting in Representing as to a Matter in Which the Employee Participated Personally and Substantially

Several Commenters asked for further delineation of permitted activities in the case of a former employee to whom section 207(b)(ii) applies. Such guidance, beyond that presented in the regulations, shall be provided through the formal advisory opinion service.

One commenter inquired as to the propriety of telephone communications during a negotiation, and as to when such communications should be deemed tantamount to "personal presence." This issue is addressed in § 737.5(b)(3) as it relates to § 737.9. A telephone call would normally constitute a communication, not an appearance, and a former Senior Employee could give assistance regarding (but could not make) such a call.

F. 1-Year Restriction on a Former Senior Employee's Transactions With a Former Agency on a Particular Matter, Regardless of Prior Involvement

One commenter urged that the final regulations clearly reflect that the qualifying language of section 207(d)(2) of the Act, as amended by Pub. L. 96–28, following "1954," in section 207(d)(2)(B), is applicable to both subparagraphs (A) and (B). The final regulations so reflect.

Another comment expressed the view that the section 207(d)(2) exemption is inequitable in that former Senior Employees employed by certain non-profit institutions could not conduct themselves in the same manner permitted former Senior Employees employed by an exempted institution. The Congress drew a clear distinction between those institutions, the employees of which would be exempt from the section 207(c) prohibitions and those who would not. OPM cannot, by regulation, go beyond that which is mandated by law.

Concern was expressed in one comment that the use of the word "hired" in § 737.11 might permit an agency to hire ex-employees as consultants, but not on a product contract basis. It was suggested that the regulations should permit any arrangement in which personal service by an ex-employee is contemplated. The final regulations substitutes "employed" for the word "hired."

One commenter felt that Example 3 of § 737.11(h) unduly broadens the statutory exception for "special knowledge." OPM considers that the example in question reflects a reasonable interpretation of the statute in regard to an area that would not normally create any actual or apparent conflict of interest on the part of a former Senior Employee.

G. Designations of Separate Statutory Agencies or Bureaus

One commenter felt that the regulations should contain a definition of " bureau," and urged the view that separate divisions within an agency do not fall within the exemption of section 207(e). The regulations contain clear guidance as to those separate statutory bureaus or agencies which qualify for treatment under section 207(e) of title 18 U.S.C. The final regulations further reflect the treatment of a separate and distinct subject matter component of an agency which may be treated separately for section 207(c) purposes. (See § 737.25(d).)

H. Partners of Present or Former Government Employees

One commenter asked for regulations pursuant to section 207(g) to cover the situation of current employees and their outside partners. The present regulations, however, are limited solely to post employment conflict of interest.

I. Officials of a State; Officials of Corporations Created by an Act of Congress and Public International Organizations

Greater clarification was requested by one commenter as to whether certain banking institutions and their directors are referred to by the provisions of § 737.23(b)(1). OPM will provide such clarification through the formal advisory opinion service when requested.

Another comment expressed concern about the treatment of former employees who join international organizations. Such former employees, except those serving under the conditions set forth in § 737.23(b)(2), would be subject to the restricitions of the law and these regulations.

J. Standards and Procedures for Designating Senior Employee Positions Pursuant to 18 U.S.C. 207(d)

Several comments raised technical questions concerning the designation of Senior Employee positions under section 207(d). One commenter asked about the situation of a consultant who voluntarily serves without pay in a position for which a rate of pay above GS–16 is authorized. The situation of a special Government Employee who serves for less than 60 days in each of two or more positions, but for a total of 60 days or more, was also presented. Such specific situations will be the subject of formal advisory opinions when requested.

One comment suggested that the regulations should not define "supervisory responsibility" in terms of the number of employees supervised, but in regard to the significance of the activities involved. The interim as well as the final regulations were drafted to emphasize the latter criteria rather than the former. Additional guidance was promulgated by OPM's memorandum to Designated Agency Ethics Officials dated April 26, 1979.

K. Administrative Enforcement Proceedings

One comment pointed out that in some cases law-enforcement powers are specifically denied to an agency. OPM considers that such situations will have to be addressed on a case by case basis.

Another commenter stated that the regulations should provide, as an alternative to § 737.27, that employees in units for which there is an exclusive representative should have the right of arbitration and to grieve the matters to be covered through the negotiated grievance procedure. The procedures set forth in § 737.27 are applicable only to former Government employees who are alleged to have violated the provisions of 18 U.S.C. 207. The recommended procedure is considered applicable to current rather than former employees and was not, therefore, adopted.

(3) Additional Sections

§ 737.13 of the interim regulations published on April 3, 1979, sets forth the standards and procedures to be applied in connection with designations of separate statutory agencies or bureaus within a department or agency for purposes of 18 U.S.C. 207(c). The Director, OGE, has determined that of those recommendations received, certain agencies and bureaus qualify for designation as separate statutory agencies. Such agencies and bureaus are designated in the new § 737.31 of the regulations.

§ 737.13 of the final regulations also sets forth the standards and procedures to be applied in connection with the designation of certain agencies, bureaus and offices as separate components within a department or agency for purposes of limiting the application of subsection (c) of 18 U.S.C. 207 pursuant to subsection (d)(1)(C) of that provision. The Director, OGE, has determined that of those recommendations received, certain agencies, bureaus and offices qualify for such designation. They are designated in new § 737.32 of the regulations.

(4) Senior Employee Designations

Interim regulations designating Senior Employee positions within certain departments and agencies were published in the Federal Register on September 25, 1979 (44 FR 55147–55160). Editorial revisions have been made and several erroneous designations have been revoked. The previously published designations are incorporated in new § 737.33. The Senior Employee designations listed in § 737.33 do not constitute all of the designations to be made by the Director, OGE, under the provisions of 18 U.S.C. 207(d)(1)(C). Additional designations for those departments and agencies not listed will be issued in the near future as a separate interim regulation to be incorporated in these regulations upon codification. The effective date of the Senior Employee designations listed in § 737.33 is February 28, 1980. OPM has determined this is a significant regulation for the purposes of E.O. 12044.

(5) Text of Law

For the use of readers in understanding the regulations, the text of Title V of the Ethics in Government Act of 1978 is set forth below: The statutory provisions concerning Post Employment Conflict of Interest appear in Title V of the Ethics in Government Act of 1978 [Pub. L. 95–521] as amended by Pub. L. 96–28, the text of which is as follows:

Title V—Post Employment Conflict of Interest

Sec. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:

"*§ 207. Disqualification of Former Officers and Employees; Disqualification of Partners of Current Officers and Employees*

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter invoving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States), by personal presence at any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) as to (i) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(d)(1) Subsection (c) of this section shall apply to a person employed—

"(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O–9 or above as described in section 201 of title 37, United States Code; or

"(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only

BEST AVAILABLE COPY

positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

"(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representations by a former officer or employee, who is—

"(A) an elected official of a State or local government, or

"(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) and accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization."

"(e) For purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communication solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

(b) The item relating to section 207 in the table or sections at the beginning of chapter II of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

Applicability

Sec. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

Effective Date

Sec. 503. The amendments made by section 501 shall become effective on July 1, 1979.

Office of Personnel Management

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is revising Part 737 of Title 5 of the Code of Federal Regulations, to read as follows:

PART 737—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

Sec.

737.1 Purpose and policy.
737.3 Definitions.

Subpart B—Substantive Provisions

737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.
737.7 Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.
737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.
737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.
737.13 Limitation of restrictions of 18 U.S.C. § 207(c) to less than the whole of a department or agency.

BEST AVAILABLE COPY

Sec.
737.15 Exemption for scientific and technological information.
737.17 Exemption for persons with special qualification in a technical discipline.
737.19 Testimony and statements under oath or subject to penalty of perjury.
737.21 Partners of present or former government employees.
737.23 Officials of a State; officials of corporations created by an act of Congress and public international organizations.
737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. § 207(d).
737.27 Administrative enforcement proceedings.
737.29 Effective date of restrictions.
737.31 Separate statutory agencies; designations.
737.32 Separate components of agencies or bureaus: designations.
737.33 "Senior Employee" designations.

Authority: Pub. L. 95-521, 92 Stat. 1862-1863 (5 U.S.C. Appendix), 92 Stat. 1864-1867 (18 U.S.C. 207).

Note.—The following index of paragraphs is provided for the convenience of the reader; this index will not appear in the CFR.

Subpart A—General Provisions

737.1 Purpose and policy.
(a) Authority.
(b) Consultation with the Attorney General.
(c) Policy and limitations.
737.3 Definitions.
(a) Statutory definitions.
(b) Interpretative definitions.

Subpart B—Substantive Provisions

737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.
(a) 18 U.S.C. 207(a).
(b) Representation.
(1) Attorneys and agents.
(2) Others.
(3) Appearances; communications made with intent to influence.
(4) Government visits to other premises.
(5) Elements of "influence" and potential controversy required.
(6) Assistance.
(7) Project responses not included.
(c) "Particular matter involving a specific party or parties".
(1) Specific matters vs. policy matters.
(2) Technical matters.
(3) Relationship of personal participation to specificity.
(4) The same particular matter must be involved.
(5) United States must be a party or have an interest.
(d) "Participate personally and substantially".
(1) Basic requirements.
(2) Participation on ancillary matters.
(3) Role of official responsibility in determining substantial participation.
(e) Agency responsibility in complex cases.
737.7 Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.
(a) 18 U.S.C. 207(b)(i).
(b) Official responsibility.
(1) Definition.
(2) Determining official responsibility.
(3) Ancillary matters and official responsibility.
(4) Knowledge of matter pending required.
(5) Self-disqualification.
(c) "Actually pending."
(d) Other essential requirements.
(e) Measurement of two-year restriction period.
737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.
(a) 18 U.S.C. 207(b)(ii).
(b) Limitation to "representational" assistance by "personal presence" at an appearance.
(c) Managerial and other off-scene assistance.
(d) Representational assistance.
(e) Measurement of restriction period.
(f) Other essential requirements.
(g) General examples.
737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.
(a) 18 U.S.C. 207(c).
(b) Transactions exempted from 18 U.S.C. 207(c).
(c) No prior involvement required.
(d) Specific parties unnecessary.
(e) Element of controversy or influence required.
(f) Agency activity or interest in matter.
(g) Application or proposals for funding of research.
(h) Personal matters.
(i) Statements based on special knowledge.
(j) Measurement of one-year restriction period.
737.13 Limitation of restrictions of 18 U.S.C. 207(c) to less than the whole of a department or agency.
(a) Authority.
(b) Distinctions between 18 U.S.C. 207(e) and 207(d)(1)(C).
(c) Separate Statutory Components.
(1) Procedure.
(2) Standards.
(3) Effect of designation.
(d) Separate nonstatutory components.
(1) Procedure.
(2) Standards.
(3) Effect of determination.
737.15 Exemption for scientific and technological information.
(a) Exemption.
(b) Necessary information.
(c) Intent to influence.
(d) Expert testimony.
(e) Agency responsibility for procedures.
737.17 Exemption for persons with special qualifications in a technical discipline.
(a) Applicability.
(b) When appropriate.
(c) Certification authority.
(d) Agency registry.
737.19 Testimony and statements under oath or subject to penalty of perjury.
(a) Statutory basis.
(b) Applicability.
(c) Statements under penalty of perjury.
737.21 Partners of present or former government employees.
(a) Scope.
(b) Imputation.
737.23 Officials of a state; officials of corporations created by an act of Congress and public international organizations.
737.25 Senior employee designations.
(a) Definitions.
(b) Designation procedures.
(1) Positions at GS-17 and 18 level, SES and pay grades 0-7 and 0-8.
(2) Standards for designation and exemption.
(3) Senior Executive Service.
(4) "Rate of pay".
(c) Differential designation.
(d) Fair notice of designation.
(e) "Acting" or temporary positions.
(f) Special Government Employee.
(g) Publication.
(h) Computation of time.
(i) Position Shifting.
(j) Revocation of designations.
737.27 Administrative enforcement proceedings.
(a) Basic Procedures.
(1) Delegation.
(2) Initiation of administative disciplinary hearing.
(3) Adequate notice.
(4) Presiding official.
(5) Time, date and place.
(6) Hearing rights.
(7) Burden of proof.
(8) Hearing decision
(9) Administrative sanctions.
(10) Judicial review.
(11) Consultation and review.
737.29 Effective date of restrictions.
(a) Persons affected.
(b) Fair notice of substantive changes.
737.31 Separate statutory agencies: designations.
737.32 Separate components of agencies or bureaus: designations.
737.33 "Senior Employee" designations.

PART 737—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

§ 737.1 Purpose and policy.

(a) *Authority.* Title IV of the Ethics in Government Act of 1978 ("the Act") established the Office of Government Ethics within the Office of Personnel Management ("OPM"). Section 402(a) of the Act provides in part that the Director, Office of Government Ethics ("the Director") shall provide, under the general supervision of OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in

BEST AVAILABLE COPY

section 105 of title 5, United States Code, and shall propose, in consultation with the Attorney General, rules and regulations to be promulgated by the President or by OPM. The purpose of this part is to issue regulations recommended by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Consultation with the Attorney General.* In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) *Policy and limitations.* These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that Title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

§ 737.3 Definitions.

(a) *Statutory definitions.* The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) *"United States" or "Government"* means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) *"Agency"* includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (See 18 U.S.C. 6.)

(3) *"Government Employee"* includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government

Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.

(4) *"Former Government Employee"* means one who was, and is no longer, a Government employee.

(5) *"Special Government Employee"* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) *"Senior Employee"* means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See 737.25 below.)

(7) *"Particular Government matter involving a specific party"* means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) *Interpretative definitions.* Other terms defined and interpreted in the substantive regulations are:

(1) "*Acting as Agent or Attorney*": (See § 737.5(b).)

(2) "*Actually Pending*": (See § 737.7(c).)

(3) "*Communicating with Intent to Influence*": (See § 737.5(b).)

(4) "*Direct and Substantial Interest*": (See § 737.11(f).)

(5) "*Participate Personally and Substantially*": (See § 737.5(d).)

(6) "*Particular Matter Involving a Specific Party or Parties*": (See § 737.5(c).)

(7) "*Particular Matter" (without parties)*: (See § 737.11(d).)

(8) "*Official Responsibility*": (See § 737.7(b).)

(9) "*Rate of Pay*": (See § 737.25(b)(4).)

Subpart B—Substantive Provisions

§ 737.5 Restrictions on any former government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

(b) *Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence.*

(1) *Attorneys and agents.* The target of this provision is the former employee who participates in a particular matter while employed by the Government and later "switches sides" by representing another person on the same matter. [NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms "Senior Employee" or "Senior" are expressly used.]

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) *Others.* The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See § 737.19 for specific rules relating to expert witnesses.)

(3) *Appearances; communications made with intent to influence.* An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) *Government visits to others premises.* Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) *Elements of "influence" and potential controversy required.* Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also § 737.11(d) below.)

Example 1: A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) *Assistance.* A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort in increase the scope of funding of the

BEST AVAILABLE COPY

contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) *Project responses not included.* In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) *"Particular matter involving a specific party or parties."*

(1) *Specific matters vs. policy matters.* The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) *Technical matters.* In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A–109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the rfp was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the rfp, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See § 737.15 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) *Relationship of personal participation to specificity.* In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee (i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example 1: A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) *The same particular matter must be involved.* The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A Government employee reviewed and approved certain wiretap

BEST AVAILABLE COPY

applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. *Other examples:* See § 737.5(b)(1), Example 1, and (c), Example 2.

(5) *United States must be a party or have an interest.* The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) *"Participate personally and substantially."*

(1) *Basic requirements.* The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also § 737.9(f) below.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See § 737.7(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) *Participation on ancillary matters.* An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See § 737.7(b)(3) below.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) *Role of official responsibility in determining substantial participation.* "Official responsibility" is defined in § 737.7(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) *Agency responsibility in complex cases.* In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

§ 737.7 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic prohibition of 18 U.S.C. 207(b)(i).* No former Government employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party (3) if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) *"Official responsibility."*

(1) *Definition.* "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) *Determining official responsibility.* Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) *Ancillary matters and official responsibility.* "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a

BEST AVAILABLE COPY

matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) *Knowledge of matter pending required.* In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) *Self-disqualification.* A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of § 207(a).

(c) *"Actually pending."* "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) *Other essential requirements.* All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under § 737.5 above.

Example 1: During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) *Measurement of two-year restriction period.* The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2: An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

§ 737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (see § 737.3(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) *Limitation to "representational" assistance by "personal presence" at an appearance.* Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) *Managerial and other off-scene assistance.* The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z

BEST AVAILABLE COPY

Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) *Representational assistance.* The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) *Measurement of restriction period.* The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. § 737.7(e))

(f) *Other Essential Requirements.* All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially" (See § 737.5(d) above) in (3) a "particular matter involving a specific party." (See subpart § 737.5(c) above.)

(g) *General Examples:*

Example 1: A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See § 737.11.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving, the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(i) as described in § 737.7 above. (But see § 737.11.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and § 737.15 below.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

§ 737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) *Transactions exempted from the basic prohibition of 18 U.S.C. 207(c).* The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) an elected official of a State or local government, acting on behalf of such government, or

(2) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

Example 1: A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2: A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3: A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree granting institution of higher education."

(c) *No prior involvement required.* The prohibition contained in this section

BEST AVAILABLE COPY

applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) *Specific parties unnecessary.* The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, *i.e.*, any judicial or other proceeding, application, request for a ruling or determination, contract, claim, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

(Note.—Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.)

Example 1: A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associate urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former co-worker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2: A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) *Element of controversy or influence required.* The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings). Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1: A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2: A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3: A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request changes in, and sign any such filing required to be transmitted to the Commission.

(f) *Agency activity or interest in matter.* The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1: A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2: The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3: In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company, (*e.g.*, a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced, there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as *amicus curiae* (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation again, Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

[Note.—Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.]

Example 4: In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) *Application or proposals for funding of research.* In connection with any application or proposal for Government funding of research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example 1: A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior

BEST AVAILABLE COPY

Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH, as part of the application, that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) *Personal matters.* Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also appear *pro se* (on his or her own behalf) in any litigation or administrative proceeding, involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example 1: Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) *Statements based on special knowledge.* The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1: A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2: A former Senior Employee is called by his successor at the agency for the purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3: A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) *Measurement of one-year restriction period.* The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See 737.7(e).)

§ 737.13 Limitation of restrictions of 18 U.S.C. § 207(c) to less than that whole of a department or agency.

(a) *Authority.* There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. § 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see 737.31) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of 0–9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see 737.32)

(b) *Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.* (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate *statutory* agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that is appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of 0–9 or above.

(2) The determination made pursuant to § 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been *administratively* created. A determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0–9 above.

(c) *Separate Statutory Components*

(1) *Procedure.* Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) *Standards.* A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) *Effect of designation.* If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each others' agencies—except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example 1: A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) *Separate Nonstatutory Components*

(1) *Procedure.* Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for

BEST AVAILABLE COPY

designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) *Standards.*

(i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency—except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) *Effect of determination.* If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and § 737.11 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in § 737.32)—except that the prohibition of section 207(c) and § 737.11 shall remain applicable (i) to those former Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in § 737.13(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director

Example 1: In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

§ 737.15 Exemption for scientific and technological information.

(a) *Exemption.* The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§ 737.5–737.11 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 1: A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) *Necessary information.* Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) *Intent to influence.* The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See § 737.5(b)(7) above.)

(d) *Expert testimony.* This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in § 737.19. As to assistance as an expert or consultant, see § 737.9(g), Example 7.

(e) *Agency responsibility for procedures.* The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

BEST AVAILABLE COPY

§ 737.17 Exemption for persons with special qualification in a technical discipline.

(a) *Applicability.* A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the Federal Register that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) *When appropriate.* This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (see § 737.15), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) *Certification authority.* Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head. Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the Federal Register for publication.

(d) *Agency registry.* An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should the necessity for such request arise.

§ 737.19 Testimony and statements under oath or subject to penalty of perjury.

(a) *Statutory basis.* Section 207(h) provides:

"Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) *Applicability.* A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c) to testify on behalf of another as an expert witness except: (1) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or (2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) *Statements under penalty of perjury.* A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 737.21 Partners of present or former government employees.

(a) *Scope.* Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) *Imputation.* Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207 (b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

§ 737.23 Officials of a state; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207 (a), (b) and (c) of title 18 U.S.C.:

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State; and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States or on temporary assignment from any agency.

§ 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. § 207(d).

(a) *Definitions.* As used in these regulations, "Senior Employee" refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1); that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of 0–9 or above as described in 37 U.S.C. 201; or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS–17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay grade 0–7 and 0–8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) *Designation procedures.* The following procedures will be followed in designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) *Positions at GS–17 and 18 level, Senior Executive Service, and pay grades 0–7 and 0–8 of the uniformed services.* The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: all positions classified at GS–17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS–17; those in the Senior Executive Service; and those active duty uniformed service officers serving in pay grades 0–7 and 0–8. Each

agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of: (i) a description of all positions as set forth in this paragraph; (ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and (iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt. Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) *Standards for designation and exemption.* Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) *Senior Executive Service.* The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) *"Rate of pay."* As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS-17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) *Differential designation.* Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(ii).

Example 1: It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) *Fair notice of designation.* No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (i) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) *"Acting" or temporary positions.* An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated position, or (2) without a significant break in continuity, is named permanently to such position.

(f) *Special Government Employee.* A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) *Publication.* Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the Federal Register.

(h) *Computation of time.* An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) below. (See § 737.7(e).)

(i) *Position shifting.* In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) *Revocation of Designations.* In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

§ 737.27 Administrative enforcement proceedings.

(a) *Basic procedures.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) *Delegation.* The head of an agency may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(3) *Adequate notice.* (i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

BEST AVAILABLE COPY

(ii) Notice to the former Government employee must include:

A. A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

B. Notification of the right to a hearing; and

C. An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

(iii) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel,

(ii) To introduce and examine witnesses and to submit physical evidence,

(iii) To confront and cross-examine adverse witnesses,

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) *Hearing decision.* (i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) *Consultation and review.* Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

§ 737.29 Effective date of restrictions.

(a) *Persons affected.* Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207 as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) *Fair notice of substantive changes.* No change in the substance of these regulations shall become effective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

BEST AVAILABLE COPY

ATTACHMENT 2M

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

Summary of the Post-Employment Restrictions of the Ethics in Government Act of 1978 and Important Interpretations in the Regulations

-Contains June 1979 Amendments-

Introduction

The Ethics in Government Act (the Act) added new restrictions to existing provisions of 18 U.S.C. section 207. Generally speaking, this statute prohibits a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government. It also prohibits a former "Senior Employee" from attempting to influence his former agency on a matter of agency business in the first year after his leaving the Government. New amendments passed in June 1979 eliminate certain unintended effects and contain certain exemptions for State and local governments, and nonprofit medical and higher education institutions.

What is prohibited depends upon the degree of the former employee's involvement in a matter while in Government, and whether he was one of a specified group of high-ranking employees ("Senior Employees").

Nothing in the Act requires a former employee to decline employment with any organization, regardless of his or her dealings with that organization while a Government employee.

Here is how the provisions work. There are only four basic restrictions:

A. Restrictions Applicable to all Former Employees

1. Permanent Bar. A former Government employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding in which he or she participated "personally and substantially" while a Government employee.

This prohibition attacks "switching sides." There are two important limitations. First, the former employee is not restricted unless the matter in which he previously participated (1) was a "particular matter involving specific parties" and (2) is the same matter in which he now attempts to represent another before the Government.

BEST AVAILABLE COPY

Thus, where an employee's prior work was limited to general matters, say, the design of a program, policy, general rulemaking, or technical concepts, he is not restricted by this prohibition as to any particular matters, which may involve this prior work, that is, specific contracts, cases or grants.

- Second, this bar requires that the employee have been personally involved in the matter in a substantial way.

- The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication with intent to influence the United States. This includes promotional and contract representatives.

2. Two-Year Bar. This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employees "official responsibility" in his last year of service. An employee's official responsibility is usually defined by statute, regulations, written delegation of authority or job description.

- There may be times when a former employee is in doubt as to whether a matter was under his official responsibility, or whether it is the same "particular matter" as that with which he was involved or whether the United States still has an interest in the matter. His former agency has an obligation to advise him promptly on those questions, as provided in the regulations.

The foregoing restrictions are effective July 1, 1979.

B. Restrictions Applicable Only to "Senior Employees"

3. Two-Year Bar on Assisting in Representation by Personal Presence. For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she personally and substantially participated while in Government.

- It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he participated while in Government, but only from assisting "in

representing" by "personal presence" at an "appearance." Thus such employee could work on a contract with which he was involved while in the Government and could manage a company, institution or university where his decisions determine the manner in which his organization will perform under a Government contract or grant. He may not render assistance on-site while a negotiation or proceeding is ongoing.

4. One-Year Ban on Attempts to Influence Former Agency. For one year after leaving employment, a former Senior Employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency.

- There are exemptions. This provision does not cover communications made on behalf of a State or local government, a degree-granting institute of higher education or a non-profit hospital or medical research institution by an elected official of such a government, or a person principally employed by such government, institute or medical organization.

- This "anti-revolving-door" provision, is different from the previous restrictions in a number of ways. First, it does not require that the former employee have had any prior involvement in the particular matter. Second, the matters covered are broader: they need not involve specific parties. So the former employee could not, for example, attempt to influence rulemaking or policy formation. Third, it is limited to contact with his former agency; he may communicate with any other part of the Government. Fourth, the restriction covers the employee's representation of himself.

- There are a number of general matters which the restriction does not cover. Among these are: purely social or informational communications -- transmission of filings which do not require Governmental action -- personal matters -- representing oneself in any judicial or administrative proceeding -- any expression of personal view where former employee has no pecuniary interest -- response to the former agency's request for information -- participation as the principal researcher or "investigator" under Government grants.

- The one year bar may be limited to only part of an agency by the Director of the Office of

Government Ethics, in certain cases, if he finds that there are distinct parts which exercise separate functions. The Director's determinations, made in consultation with the departments or agencies, will be published.

What is a Senior Employee?

There are three groups of Senior Employees. Two are named automatically by statute: civilians at the Executive Level and active duty uniformed service officers at 0-9 and above. The other group is made up of persons holding positions which must first be "designated" as Senior Employees by the Director of the Office of Government Ethics. The positions must involve significant decision-making or supervisory responsibility and be at a basic rate of pay of GS-17 or above or within the Senior Executive Service, or in the case of the uniformed services, be held by active duty commissioned officers at 0-7 or 0-8.

Other Important Features

o The restrictions do not apply to communications made solely for the purpose of furnishing scientific or technological information pursuant to agency procedures. Office of Government Ethics regulations treat this area realistically, permitting communications to determine the nature of technical problems facing the Government, to provide approaches to such problems and to inform the Government of the practical significance of scientific and technological alternatives.

o There is a "fair notice" provision which ensures that employees who continue in Government employment in reliance on the regulations will not suddenly be made subject to any future changes. Any changes in the regulations which add greater restrictions will not become applicable to an employee unless he remains with the Government more than five months after the new rule is published in final form.

o Effective dates: The broadening of the provisions applicable to all employees is effective July 1, 1979. The new provisions applicable to Senior Employees will become effective as to Executive Level civilian employees and uniformed service officers of the grade of 0-9 and above on July 1, 1979. Those positions at GS-17 or above or in the Senior Executive Service, or held by 0-7 and 0-8 uniformed service officers and which are designated by the Director will be subject to the Senior Employee restrictions as of October 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Office of Government Ethics
Room 5315
1900 "E" Street, N.W.
Washington, D.C. 20415
(202) 632-7642

BEST AVAILABLE COPY

ATTACHMENT 2N

PART 223—ADMINISTRATIVE ENFORCEMENT PROCEDURES OF POST-EMPLOYMENT RESTRICTIONS

Sec.
223.1 General.
223.2 Report of violations.
223.3 Initiation of proceeding.
223.4 Examiner.
223.5 Agency representative.
223.6 Time, date and place of hearing.
223.7 Rights of parties at hearing.
223.8 Initial decision.
223.9 Appeal.
223.10 Final decision.
223.11 Appropriate action.

AUTHORITY: 18 U.S.C. 207.
SOURCE: 46 FR 55957, Nov. 13, 1981, unless otherwise noted.

§ 223.1 General.

The following procedures are hereby established with respect to the administrative enforcement of restrictions on post-employment activities (18 U.S.C. 207 (a), (b) or (c)) and implementing regulations published by the Office of Government Ethics (5 CFR Part 737).

§ 223.2 Report of violations.

On receipt of information regarding a possible violation of the statutory or regulatory post-employment restrictions by a former employee and after determining that such information does not appear to be frivolous, the General Counsel shall provide such information to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. Any investigation or administrative action shall be coordinated with the Department of Justice to avoid prejudicing possible criminal proceedings. If the Department of Justice informs the Agency that it does not intend to institute criminal proceedings, such coordination shall no longer be required and the General Counsel is free to decide whether to pursue administrative action.

§ 223.3 Initiation of proceeding.

Whenever the General Counsel has reasonable cause to believe that a former Government employee has violated the statutory or regulatory post-employment restrictions, he or she shall initiate an administrative action by providing the former Government employee with written notice of intention to institute administrative action. Notice must include:

(a) A statement of allegations and the basis thereof sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(b) Notification of the right to respond to the allegations in writing and/or to request a hearing, together with an explanation of the method by which a hearing may be requested; and

(c) A statement that, in the absence of a request for a hearing, the General Counsel shall issue a final decision based upon the evidence gathered to date, including any written reply made by the former Government employee.

§ 223.4 Examiner.

When a former Government employee after receiving adequate notice requests a hearing, a presiding official (hereinafter referred to as "examiner") shall be appointed by the Administrator to make an initial decision. The examiner shall be a responsible person who is impartial and who has not participated in any manner in the decision to initiate the proceeding. The hearing officer shall be an individual with suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

§ 223.5 Agency representative.

The General Counsel shall appoint an agency representative to present evidence and otherwise participate in the hearing.

§ 223.6 Time, date and place of hearing.

The examiner shall establish a reasonable time, date and place to conduct the hearing. In establishing a date, the examiner shall give due regard to the former employee's need for:

(a) Adequate time to prepare a defense properly, and

(b) An expeditious resolution of allegations that may be damaging to his or her reputation.

§ 223.7 Rights of parties at hearing.

A hearing shall include, at a minimum, the following rights for both parties:

(a) To represent oneself or to be represented by counsel;

(b) To examine or cross-examine witnesses;

(c) To submit evidence (including the use of interrogatories);

(d) To present oral arguments; and

(e) To receive a transcript of recording of the proceedings on request.

In any hearing, the agency has the burden of proof and must establish substantial evidence of a violation.

§ 223.8 Initial decision.

The examiner shall issue an initial decision based exclusively on matters of record in the proceedings and shall set forth all findings of fact and conclusions of law relevant to the matters at issue.

§ 223.9 Appeal.

Within twenty days of the date of initial decision, either party may appeal the decision to the Administrator. The opposing party shall have ten days after receipt of a copy of the appeal to reply.

§ 223.10 Final decision.

(a) In cases where the former employee failed to request a hearing after receiving adequate notice, the General Counsel shall decide the matter on its merits based upon the evidence gathered to date, including any written reply of the former employee.

(b) In cases of appeal under § 223.9, the Administrator shall accept, reject or modify the initial decision based solely on the record of the proceedings or those portions cited by the parties to limit the issues.

§ 223.11 Appropriate action.

The Administrator may take appropriate action in the case of any individual who is found in violation of the statutory or regulatory post employment restrictions after a final decision by:

(a) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence, any oral or written communication to, the Agency on any matter of business for a period not to exceed five years, which may be accomplished by directing Agency employees to refuse to participate in such appearance or to accept any such communication; and

(b) Taking other appropriate disciplinary action.

CHAPTER 3

PERSONNEL MANAGEMENT EVALUATION

3A. Purpose

1. General

This Chapter describes the principal characteristics of the personnel management evaluation system, outlines the responsibilities of those involved, and contains as Appendix 3A an evaluation checklist for all supervisors and managers.

2. Policy

AID has a personnel management evaluation system, which is used to determine how effectively the Agency has made use of its personnel resources in terms of:

a. The accomplishment of its mission.

b. Efficiency and economy.

c. Adherence to the requirements of:

(1) Law and public policy;

(2) U.S. Office of Personnel Management (OPM) and AID rules, regulations, procedures, and policies, and adherence to the specific delegations of OPM;

(3) The basic concepts of equity and fairness; and

(4) The existing relationship and responsibilities between the recognized union representatives and AID in accordance with Federal policy.

3. Principal Objectives of the System

The personnel evaluation system and the evaluation plan designed to implement it have three distinct but interlocking primary objectives:

a. To provide the Administrator with assurance that both the Civil Service and Foreign Service personnel systems are managed with integrity and within the framework of law, regulations, and principles of merit that must apply.

b. To determine the degree to which both responsible managers and the personnel systems seek and achieve optimum performance consistent with the mission needs of AID.

3A3

c. To establish the degree to which managers, and the management systems designed to assist and guide them, maximize efficiency and economy as well as effectiveness in the use of personnel resources.

3B. Scope

The personnel management evaluation process applies to all managers, including senior officials in AID.

3C. Authorities

1. Civil Service Reform Act of 1978 and implementing regulations.

2. Foreign Service Act of 1980.

3. AID personnel guidance following OPM mandates.

3D. Responsibilities

1. While the ultimate responsibility for personnel management evaluation rests with the Administrator, the primary leadership role for this activity is assigned to the Director, Office of Personnel Management (M/PM/OD).

2. All managers, including Assistant Administrators and the heads of all organizational units which have delegated authority to make or to recommend personnel decisions and actions, are expected to take personal responsibility for full participation by their units in the evaluation process.

3. The Director of M/PM has been assigned the specific responsibility for developing and coordinating the implementation of an evaluation plan that meets the needs of AID and complies with the standards and requirements imposed by OPM, as well as providing staff leadership and support for the evaluation process at every level to fulfill the requirements of the plan. The Director of M/PM should be consulted before any study or project having personnel management evaluation implications is undertaken by program bureaus or staff offices.

4. The Director of M/PM is also responsible for ensuring that significant findings and recommendations reach the attention of appropriate management officials, and for making regular and special reports to the Administrator and Deputy Administrator. Such reports should record progress, highlight problems and deficiencies, and recommend actions needed to improve personnel management effectiveness, or to bring AID into fuller compliance with pertinent laws and OPM and AID regulations and instructions.

5. Heads of Bureaus and Staff Offices in AID/W and Directors of overseas offices (including all Missions) will ensure:

3D5

a. That all of their managers and supervisors are fully and currently informed concerning Agency personnel management goals and objectives as approved by the Administrator.

b. That responsibilities assigned to their organizations for developing or implementing pertinent support action plans are met within established time schedules.

6. Heads of Bureaus and Staff Offices in AID/W and Directors of overseas offices are encouraged to supplement the major thrusts of Agency personnel management evaluation by initiating reviews of the personnel management process in their own organizations. (See Appendix 3A, Personnel Management Evaluation Checklist for Managers and Supervisors.) These supplemental reviews may:

a. Embrace the full range of personnel management responsibilities.

b. Deal with significant personnel problems not addressed by Agency goals, objectives, or supporting action plans. These supplemental evaluations may also provide a basis for recommending revisions or additions to existing goals, objectives, or action plans.

3E. Procedures

1. Evaluation Plan Elements

The plan will include the following elements:

a. Standards and requirements in Chapter 250 of the Federal Personnel Manual (FPM), the Foreign Service Act, and other applicable issuances.

b. Information, including maximum use of the data base now in AID's Revised Automated Manpower and Personnel System (RAMPS), to permit AID to:

(1) Assess the degree to which it is accomplishing the annually established personnel management goals and objectives.

(2) Establish shortfalls.

(3) Determine actions and time frames needed to make further progress.

c. Criteria that can be used by program managers and staff officers in evaluating their contribution to effective personnel management.

d. Assurance that every aspect of personnel management evaluation activity includes as a basic component, the attainment of equal employment opportunity objectives.

3E1

e. Means by which AID can track its response to all high interest programs emphasized by the President, the Congress, and central agencies.

2. General Procedures

To accomplish the objectives of the system, the following actions must be taken:

a. Assess the current state of personnel management effectiveness, including strengths as well as weaknesses.

b. Establish the relative priority of problems that require resolution.

c. Develop comprehensive personnel goals which address both the overall objectives of personnel management and the specific problems, issues, and priorities identified.

d. Assign specific responsibilities and delegate authority to all participants for accomplishing these goals and objectives including action plans, timetables and target dates, specific reporting requirements and evaluation criteria to permit assessment of progress.

e. Regularly assess progress in achieving goals and objectives and determine follow-up actions including those required by success or failure of specifications or changing mandates and priorities.

3. Establishment of AID Personnel Goals and Action Plans

a. Relationship Between AID's Personnel Management Evaluation and AID's Personnel Management Goals and Objectives:

(1) The development of personnel management goals is a separate and distinct program, yet is still a basic part of the personnel management evaluation program.

(2) Annual personnel management goals are developed and issued by the Administrator. These goals indicate the Agency's program and policy emphasis in its total program and provide an index against which progress can be measured.

(3) Bureaus, Offices, and Missions shall develop under the guidance of M/PM, specific personnel goals consistent with Agency areas of emphasis and which reflect their individual personnel needs. An integral part of the personnel management review process is the assessment of progress towards these goals as well as the appropriateness of the goals in terms of their contribution to mission accomplishment.

3E3a

(4) Managers, supervisors, and Bureau/Office management/executive officers should participate in the development of personnel management goals and objectives to ensure that goals are realistic and mutually understood and accepted. Clear and measurable goals are:

(a) Specific as to what is to be accomplished.

(b) Action and results oriented.

(c) Have a measurable result and verifiable criteria to signal when the objective has been reached.

(d) Controllable by those setting them.

(e) Capable of easy change and adaptation.

b. The establishment of annual AID personnel goals will be accomplished in the following manner:

(1) Appropriate input will be requested by M/PM from all Bureaus and Offices reporting to the Administrator.

(2) M/PM will prepare an initial draft of proposed goals and will obtain comments/clearances from Bureaus and Offices. At the same time, recognizing the value of employee input in the goal setting process, while in no way intending to imply that goal establishment is a consultable/negotiable matter, initial draft goals will be presented to the exclusive representatives of AID employees for their information and comments.

(3) M/PM will consider the comments and suggestions of Bureaus and Offices, and those of the exclusive representatives, redrafting proposed goals as may be appropriate.

(4) The final draft of the proposed goals will be submitted for approval to the Administrator, through the Assistant to the Administrator for Management (AA/M).

(5) When approved, the goals will be assigned by M/PM to the appropriate offices, or ad hoc task forces as appropriate, for development of action plans. Simultaneously, the goals will be transmitted by the Labor Relations Staff (M/PM/LR) to the exclusive representatives for their information. M/PM will be responsible for coordinating the work involved to satisfactory completion.

c. Action plans shall include detailed exposition of:

(1) Action to be taken.

(2) Responsibility/accountability.

3E3c

(3) Timetables, including intermediate target dates.

(4) Information to be collected to permit evaluation of progress.

(5) Appropriate reporting requirements.

(6) Identification of proposed implementation actions requiring prior conferral, consultation, or negotiation with employee representatives as may be appropriate, and suggested timetable for carrying out those obligations.

d. Agency goals and action plans will be reviewed and updated at least annually.

(1) This review will be included as part of the initial call for input for the purpose of developing the ensuing year's plans.

(2) As action proceeds under approved action plans, M/PM will remain alert to factors which may call for changes in action plans, timetables, or AID goals themselves which may become necessary or desirable before the next annual review. Such proposals shall be considered by the AA/M. Changes may be instituted whenever this is determined to be desirable.

Appendix 3A

PERSONNEL MANAGEMENT EVALUATION CHECKLIST FOR MANAGERS AND SUPERVISORS

3A. Purpose

The quality of AID's personnel resources, the development and utilization of employee skills and abilities to accomplish the work of the Agency, and personnel costs are management controllable. They must be a major concern at every level of management. AID's effectiveness depends increasingly on improving the management of its human resources. Evaluation is an essential element in that effort--the assessment of results achieved against objectives set. To fulfill their personnel management responsibilities, AID managers and supervisors must know how well their personnel management activities are contributing to employee productivity, and organizational effectiveness within the framework of applicable laws, regulations, and public policies.

3B. Definition

Personnel management for this purpose is defined as planning for, recruiting, employing, developing, and utilizing personnel with the knowledge, skills, abilities, and attitudes necessary to accomplish the overall AID mission effectively within the dictates of pertinent laws, regulations, and program requirements.

3C. Responsibilities

1. Effective personnel management is the responsibility of every supervisor. Therefore, all managers and supervisors in AID must evaluate their personnel management effectiveness periodically to take corrective action on any deficiencies within the scope of their authority and responsibility, and to report to higher levels of management and/or the Office of Personnel Management (M/PM) identified problems which demand their attention and action.

2. Agency managers and personnel officials have the responsibility to ensure that regulations, guidelines and instructions issued by the U.S. Office of Personnel Management (OPM) are properly applied to all actions taken under delegated authorities. Agency personnel offices must keep the following minimum records for each action taken under the delegated authorities and have the records available for audit by OPM and Agency evaluators for at least two years:

a. Type of action,

b. Processing time,

c. Name of person who authorized the final action,

3C2

d. Date of the decision, and

e. A brief statement setting forth the rationale for the decision.

Each agency must have a means of internally evaluating the use and proper application of the authorities. OPM staff is available to provide assistance to an agency in setting up its system.

3D. Use Of The Checklist

1. The following Checklist has been developed to assist managers and supervisors in making periodic self-appraisals. It has been developed also to inform managers and supervisors about the type and scope of questions which will be raised and investigated in an internal personnel management audit or review of personnel management by OPM. It is not all-inclusive in any sense, but it covers important management responsibilities in four functional areas: (1) planning and organizing work, (2) staffing, (3) management performance, and (4) improving personnel management.

2. The approach of the Checklist is to ask questions. Managers and supervisors using the Checklist should answer the questions objectively concerning their operations. Outside help may be needed to obtain pertinent data to provide some of the answers. M/PM will provide staff assistance as needed.

3E. Timing And Reporting

1. Each year M/PM will develop an overall plan for evaluating personnel management in AID. The plan will include a schedule of assessments in organizational components of AID. From time to time it will request internal assessments and reports by those components based in part on the Checklist. Approximately one-third of the Bureaus and Staff Offices in AID/W and Missions will be requested to conduct and report on their internal evaluations each year.

2. Managers and Supervisors are strongly encouraged to use the Checklist whenever self-assessment is desired. Only scheduled assessments need be submitted to M/PM. However, when a problem beyond an individual's authority or capacity to solve is identified, it is the individual's responsibility to document the problem and its causes and to report it to higher levels of management or to M/PM.

3F. Checklist

1. Planning And Work Organization

a. Is work effectively planned and organized to achieve mission requirements within the dictates of economy, efficiency, public policy, and employee motivation and utilization?

3F1a

(1) Are resources allocated in accordance with priorities for accomplishing objectives and maintaining surveillance over performance?

(2) Has sufficient authority been delegated to implement both programs and personnel decisions required?

(3) Are responsible supervisors and staff officials fully informed of objectives and goals and involved in the planning and work organization process; e.g., are M/PM and the Office of Information Resources Management (M/SER/IRM/MMP) promptly informed of possible changes in organization and position structure?

(4) Are the activities of those responsible for planning and organizing work fully coordinated?

(5) Are duties grouped and assigned with concern for job interest, challenge, and employee development so as to maximize present and potential employee performance consistent with the needs of the organization?

(6) Does the management climate motivate improvement in planning and organizing work to meet mission and public policy requirements?

(7) Are individual jobs identified and functions and responsibilities distributed with concern for efficient use of personnel and economical organization?

(8) Do career ladders exist for employees to maximize utilization of their skills and potential consistent with organizational needs?

(9) Does the work organization and position structure facilitate attainment of public policy objectives, including equal employment opportunity and employment of the physically handicapped?

b. Does the position structure of the organization conform to sound management principles?

(1) Are there elements of overlap, duplication, conflict, or ambiguity present in positions?

(2) Is there unnecessary job dilution or overspecialization of duties?

(3) Are there unessential levels of supervision?

(4) Are the ratios of seniors to journeypersons, journeypersons to subjourneypersons, professionals to support personnel, and supervisors to nonsupervisors consistent with the needs of the organization and has the position structure been appropriately modified to cope with change?

3F1

c. Are positions appropriately described and classified in accordance with applicable standards?

(1) Are position descriptions current and accurate?

(2) Do position descriptions provide an adequate basis for classification, performance evaluation, recruitment, and job placement?

(3) Has there been a timely audit of positions which were classified on a projected basis?

(4) Are significant changes in position duties promptly reported to M/PM?

(5) Are employee details appropriately reported and terminated?

(6) Do employees fully understand their duties and responsibilities, how they relate to others, and to whom they are responsible for all phases of their work?

d. Is the work organization and position structure continuously appraised in terms of its efficiency and effectiveness and is prompt action taken to adjust resource allocation and position and organization structure to changes in workload and mission?

(1) Are employees doing the work to which they have been assigned and is action taken to record job changes?

(2) Is work organized and are employees assigned to accomplish work objectives efficiently and economically?

(3) Do employees understand their duties and their job relationships?

e. Do supervisors work with higher levels of management, staff offices, and employees to modify jobs, organization and work processes, as needed, by:

(1) Initiating or recommending changes in organization, position structure, and staffing to eliminate unnecessary tasks and activities or to obtain needed additional personnel?

(2) Requesting or cooperating in organization, classification, and position management survey studies; implementing findings; and developing and effecting plans to minimize adverse effects on employees?

(3) Informing employees and employee representatives about changes in mission, budget, and technology and other changes so that employee understanding and support are enhanced?

3F

2. Staffing

a. Is the organization obtaining personnel with the qualifications needed to carry out its responsibilities?

b. Is M/PM provided with a projection of the numbers and kinds of employees needed on a short- and long-term basis, taking into account such elements as anticipated retirements, turnover, job redesign, training programs, policy and mission changes, and the potential availability of personnel in the organization and the labor market?

c. Do the staffing practices of the organization conform fully with the principles of merit and equal opportunity?

(1) Are all sources of personnel considered in the staffing process?

(2) Are personnel selections made or recommended solely on the basis of merit and fairness?

(3) Are affirmative action efforts planned and carried out to achieve equal employment opportunity and upward mobility for minority groups, women, the handicapped, and other groups to preclude discrimination in employment?

d. Are short- and long-term work force requirements being met effectively through planned development of staffing resources within the organization and use of the external labor market?

(1) Is effective use made of filling jobs at less than journeyperson level?

(2) Is appraisal of potential based on a thorough analysis of job requirements?

e. Is the total staffing process, including recruitment, placement, merit promotion, and career development, utilized to maximize advancement and to achieve overall mission objectives?

(1) Have adequate procedures been established for the continuing control and appraisal of the flow of personnel into and through the organization to ensure that a sufficient number of highly qualified eligibles are available when positions must be filled and that opportunities exist for growth and development throughout the organization?

(2) Are merit and public policy objectives being met in the staffing process?

(3) Is there adequate training to ensure the development of managerial and other critically needed skills?

3F2e

(4) Are recruitment sources developed and utilized to obtain qualified candidates for hard-to-fill positions?

(5) Are employees skills and training effectively utilized?

f. Is there effective coordination of work force planning with program planning, budget, and other relevant work force control systems?

g. Do supervisors--

(1) Identify staffing needs and suggest ways in which these needs can be met by:

(a) Participating in analysis of staffing needs in terms of work to be done in their organizational unit?

(b) Providing feedback on the performance and potential of new placements for evaluation of recruitment, selection, and merit promotion procedures?

(c) Informing M/PM of actual vacancies, anticipated vacancies, and turnover?

(d) Recommending or determining whether vacancies should be filled from internal placement or outside hire?

(2) Use their knowledge of job content and the motivation and abilities of employees to develop and suggest lines of career progression into, within, and from their work groups, and in so doing:

(a) Provide counseling to employees on career opportunities?

(b) Work with the personnel staff on job design and career ladders?

(c) Participate in recruiting efforts by informing M/PM of possible recruiting services and making their services available as specialized recruiters and rating panel members?

(3) Utilize the staff process effectively and fairly to fill positions in their unit through:

(a) Developing employees to meet future staffing needs?

(b) Evaluating and appraising employee promotion potential based on a thorough analysis of job performance?

3F2g(3)

(c) Making and recommending personnel selections on the basis of merit and fitness, without regard to race, national origin, sex, age, religion, physical handicap, or other nonmerit factors?

(d) Carrying out in good faith staff responsibilities assigned to them in action plans to achieve equal employment opportunity?

(e) Living up to the provisions of applicable union-management agreements?

3. Managing Performance

a. Are organizational goals, up-to-date work methods, and performance expectations communicated to employees by managers and supervisors?

(1) Is job performance measured against expectation?

(2) Are performance problems and causes diagnosed?

(3) Are appropriate actions taken to improve job performance and job satisfaction?

(4) Are affirmative efforts planned and carried out to achieve equal employment opportunity and upward mobility for minority groups, women, the handicapped, and other groups subject to discrimination in employment?

b. Are there responsive and coordinated managerial and supervisory efforts to:

(1) Appraise objectively employee performance and potential?

(2) Identify training needs and provide needed training?

(3) Provide effective and equitable recognition, incentive, and discipline?

(4) Develop and maintain effective labor-management relations?

(5) Seek necessary job changes for employees to improve utilization of skills and abilities?

(6) Obtain, carefully consider, and adopt or recommend adoption of employee ideas for improving operations?

(7) Maintain safe and healthy working conditions and make special efforts to accommodate work processes to employees' disabilities?

3F3

c. Do supervisors:

(1) Participate with managers and staff officials in setting program objectives and establishing personnel management policies and procedures designed to maximize employee performance and satisfaction?

(2) Exercise leadership in day-to-day management of employees in their units including assigning specific duties and responsibilities to employees and informing them of performance expectation?

(3) Measure employee performance against realistic standards of performance?

(4) Inform employees of how well they are doing and, through discussions and counseling, help them improve and develop?

(5) Initiate or recommend actions to improve employee performance by:

(a) Discussing and implementing means of improving work operations and assisting employees in developing suggestions for the consideration of higher levels where appropriate?

(b) Identifying employee training needs and seeing to it that training is provided to keep up with changing job requirements and employee growth potential?

(c) Securing necessary job changes to improve employee utilization?

(d) Making full use of appropriate measures to motivate and recognize superior employee performance?

(e) Using disciplinary measures fairly and objectively to obtain essential changes in employee behavior?

(6) Maintain effective human relations through:

(a) Serving as a channel of communication both upward and downward between management and employees?

(b) Establishing good working relations with union representatives and living up to provisions of negotiated agreements?

(c) Giving employees and their representatives an opportunity to express their opinions before decisions are made on problems of material concern to them?

(d) Providing assistance to employees in solving work-related personal problems?

3F3c

(7) Work with management and staff officials to establish safe working conditions and to provide essential employee services?

4. Improving Personnel Management

a. Is there understanding and acceptance by every level of management and supervision of their responsibility for evaluating the effectiveness of their personnel management activities, identifying problems, establishing priorities, setting or recommending goals, and taking or recommending appropriate action, where necessary, to higher authority or to pertinent staff offices?

(1) Is every reasonable effort made through training and other appropriate means to develop a high order of personnel management expertise on the part of supervisors and to ensure that personnel management issues are fully considered in all management decisions?

(2) Are specific goals and priorities, including Agency personnel management goals, communicated fully to employees and all supervisors and managers?

(3) Are there effective means of following up on delegated authorities and responsibilities for personnel management, measuring progress toward improvement goals, and identifying present and potential problems?

(4) Are actions planned and taken to reach improvement goals and to correct identified problems?

(5) Is there frank communication upward and to appropriate staff offices concerning the state of personnel management, and full participation in Agency efforts to evaluate and improve personnel management?

b. Do supervisors:

(1) Assume responsibility for improving personnel management within their units and seek technical guidance and advice, where necessary, to achieve this overall objective?

(2) Participate actively with managers in the development of improvement goals, including possible Agency personnel management goals, by analyzing personnel management issues and problems within their units and suggesting areas where improvement is needed?

(3) Carry out assigned actions to evaluate and improve personnel management in cooperation with other supervisors and pertinent staff offices?

(4) Take action to correct causes of problems and to improve personnel management within their units within the scope of their authority?

CHAPTER 4

LABOR-MANAGEMENT RELATIONS

4A. Purpose

The purpose of these regulations is to state policies and prescribe procedures for the conduct of labor-management relations for Civil Service and Foreign Service employees of the Agency for International Development.

4B. Policy

1. Federal Policy

The Congress has established labor-management relations policy for Civil Service employees in Title VII of the Civil Service Reform Act of 1978 (5 USC 7101) (CSRA), and in almost identical terms for Foreign Service employees in Chapter 10 of the Foreign Service Act of 1980 (22 USC 4101) (FSA). The policy is as follows:

"...experience in both private and public employment indicates that the statutory protection of the right of workers (employees) to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--

"(A) Safeguards the public interest,

"(B) Contributes to the effective conduct of public business, and

"(C) Facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and

"...the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

"Therefore, labor organizations and collective bargaining...are in the public interest...."

The policy statement in the FSA also states:

"...The unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service."

4B

2. Agency Policy

a. It is AID policy to provide a labor-management relations system which will ensure its employees the right to effective participation in the formulation of the personnel policies and practices affecting their conditions of employment.

b. AID recognizes the right of its employees to organize and express their views collectively and the principle that an employee may join or refrain from joining a labor organization without interference, coercion, restraint, discrimination, or reprisal. Membership in a labor organization is not to be made a condition of employment or the basis for granting preferential treatment or withholding equitable treatment. To promote effective labor-management relations, AID provides training and other informational programs for supervisors and managers so that they are aware of management's rights and obligations in dealing with labor organizations.

4C. Scope

The provisions of this Chapter and attachments apply to U.S. citizen employees of AID. While there is a substantial measure of commonality in the two laws governing labor-management relations for the Civil Service and Foreign Service, there are also differences (e.g., the composition of the bargaining units) which are treated below. Paragraph 4G below and Attachments 4A (Title VII, CSRA) and 4B (current Negotiated Agreement between AFGE and AID) apply to the Civil Service. Paragraph 4H below and Attachment 4C (Chapter 10, FSA) apply to the Foreign Service and AID's relations with AFSA.

4D. Definitions

The terms used herein have the same definitions as set forth in the appropriate act; the definitions provided in sec. 7103 of Title VII, CSRA (5 USC 7103) apply to the Civil Service and those in sec. 1002, FSA (22 USC 4102) apply to the Foreign Service.

4E. Authorities

1. Civil Service Reform Act of 1978, Title VII, (5 USC 7101 et seq.).

2. Foreign Service Act of 1980 (22 USC 4101 et seq.).

4F. Responsibilities

The Chief, Labor Relations Staff (M/PM/LR), is the Administrator's designated representative in dealing with the exclusive employee representatives. This designation has been made to facilitate, centralize, and expedite processing of labor relations matters. Those offices in AID which are responsible for the development of policies and procedures affecting working conditions are required to keep M/PM/LR informed on a continuing basis of developments in their areas which impact upon M/PM/LR's responsibilities.

4F

In considering union proposals, M/PM/LR will coordinate with appropriate offices in AID. M/PM/LR represents the Agency in joint negotiations with the union(s) when a personnel policy applies to Foreign Service employees in more than one Foreign Affairs agency.

4G. Labor-Management Relations In The Civil Service

1. Background

There have been unions and concerted labor activities involving Federal employees since the 1830s and Federal employees have enjoyed the legal right to organize into unions since 1912; however, the greatest growth in Federal sector union membership and the attendant labor relations activities have come since the 1960s. Executive Order (E.O.) 10988, Employee-Management Cooperation in the Federal Service, was issued in 1962, at which time most of the union members were blue collar or postal workers. One year later, there were 180,000 nonpostal workers in units with exclusive recognition and by 1969, when E.O. 11491, Labor-Management Relations in the Federal Sector, was issued, that number had grown to 843,000, half of whom were white collar workers. E.O. 11491 was superseded by Title VII of the CSRA.

2. Title VII, Civil Service Reform Act

a. Exclusive Recognition of the Union

(1) The American Federation of Government Employees, AFL-CIO (AFGE) has been elected the exclusive representative of most of the Agency's non-supervisory Civil Service employees, collectively referred to as the Unit. In its dealings with AID, AFGE generally functions through its Local 1534.

(2) The Unit consists of all AID professional and nonprofessional Wage Grade and General Schedule employees, Administratively Determined employees (AD), and Student Aides.

(3) Excluded from the Unit are supervisors, management officials, employees engaged in personnel work in other than a purely clerical capacity, employees engaged in administering the provisions of Title VII, confidential employees, and Foreign Service employees. Additionally, the immediate office of the Inspector General (IG), the Office of Investigations and Inspections (IG/II), the Office of Security (IG/SEC) and the Office of the Regional Inspector General for Audit/Washington (RIG/A/W) were declared by the President in E.O. 12171 to have as a primary function intelligence, counterintelligence, investigative or national security work.

The President, therefore, determined that Title VII cannot be applied to these units within IG in a manner consistent with national security requirements and considerations, thus excluding the Civil Service employees in those units from coverage of Title VII.

4G2

b. Federal Labor Relations Authority (FLRA)

(1) Established by the CSRA, the three member FLRA is responsible, inter alia, for providing leadership in establishing policies and guidance relating to matters under Title VII and for carrying out its purpose. The FLRA determines the appropriateness of units for union representation, supervises or conducts representation elections, resolves issues relating to the duty to bargain in good faith, conducts hearings and resolves complaints of unfair labor practices, resolves exceptions to arbitrators' awards, and takes such other actions as are necessary and appropriate to administer Title VII.

(2) The General Counsel of the FLRA investigates alleged unfair labor practices and, where appropriate, files and prosecutes complaints of such practices.

(3) The Federal Service Impasses Panel (FSIP) is an entity within the FLRA. Its function is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives. After investigating and considering any impasse presented to it, the FSIP either recommends procedures for resolving the impasse or assists the parties in resolving it through whatever methods it considers appropriate, including fact finding and recommendations. Should those efforts be unsuccessful, the FSIP may hold hearings and take whatever action is necessary and not inconsistent with Title VII to resolve the impasse. Such action is binding upon the parties during the term of the agreement unless the parties agree otherwise.

(4) The regulations and decisions of the FLRA, the General Counsel, the FSIP, and judicial final decisions rendered pursuant to Section 7123 of the Act are controlling with respect to covered issues.

4H. Labor-Management Relations In The Foreign Service

1. Background

The concept that "the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive and cooperative relationships between management officials and organizations representing Foreign Service employees" first appeared as part of the preamble to E.O. 11636, Employee-Management Relations in the Foreign Service of the United States. Signed by the President December 17, 1971, the Order, inter alia: (1) removed the Foreign Service employees of State, AID, and USIA from coverage of E.O. 11491; (2) established as a committee of the Board of the Foreign Service an Employee-Management Relations Commission (EMRC) to administer the Foreign Service labor relations program, supervise representation elections, and decide complaints of alleged unfair labor practices as well as negotiability disputes; and (3) provides for a single, worldwide bargaining unit in each agency whose Foreign Service employees voted for union representation.

4H1

Unlike the Order it replaced, however, E.O. 11636 did not establish a labor-management relations program which required agencies to negotiate with the labor unions which represented nonsupervisory employees, with the anticipated result of a comprehensive collective bargaining agreement. Rather it established an "employee-management" relations program requiring agencies to "consult" with the "employee organization" representing all employees except a few "management officials" and "confidential employees". Because the Order did not envisage a comprehensive agreement, there evolved a system of continual bargaining, generally on single issues, known as "rolling negotiations."

2. Chapter 10, Foreign Service Act of 1980

Chapter 10 of the FSA reflects both the employee-management relations system as established for the Foreign Service under E.O. 11636 and Title VII of the CSRA, which governs labor-management relations in the Civil Service. It authorizes collective bargaining on conditions of employment in the Foreign Service subject to certain excluded areas of "management rights" comparable to those matters excluded from bargaining under Title VII. Continued are the concepts of a single agencywide unit as well as the inclusion in the bargaining unit of many employees who perform supervisory functions. Gone, however, are the euphemisms of E.O. 11636, e.g., the new Act speaks of "labor-management" rather than "employee-management" relations and "negotiating" rather than "consulting."

While the decisions management makes in exercising its reserved rights are nonnegotiable, the procedures which management will employ in implementing its decisions generally are subject to negotiation. In the broadest sense, negotiations are permitted on "conditions of employment." In Chapter 10, conditions of employment are defined as personnel policies, practices, and other matters affecting working conditions. Excluded are matters relating to prohibited political activity, designation or classification of positions, Governmentwide or multiagency responsibilities of the Secretary of State affecting agencies not authorized to utilize the Foreign Service personnel systems, and matters specifically provided for by law--for example, pay and benefits.

Unfair labor practices which may be committed by either the Agency, the union or both, are consistent with those established under Title VII. Similarly consistent is a section which protects managers who express personal views concerning a representational election or the Government's policy relating to labor-management relations and representation generally if such opinions contain no threat of reprisal, force, or promise of benefit and were not made under coercive conditions. Such views, arguments, opinions or statements will not constitute an unfair labor practice or provide grounds for setting aside an election conducted under Chapter 10. Also, consistent with Title VII is a section which provides for an election of remedies, thereby precluding the consideration of a complaint both as an unfair labor practice and as a grievance.

4H2

a. Exclusive Recognition of the Union

(1) The American Foreign Service Association (AFSA) is the exclusive representative of AID's Foreign Service employees by virtue of its 1973 certification by the EMRC following a representation election.

(2) As noted above, the bargaining unit represented by AFSA consists of AID's U.S. citizen Foreign Service employees, in Washington and overseas.

(3) Excluded are management officials and confidential employees, and as with Title VII, employees engaged in personnel work in other than a purely clerical capacity, employees engaged in implementing Chapter 10 and employees engaged in criminal or national security investigations or who audit the work of individuals to ensure that their functions are discharged honestly and with integrity.

b. Foreign Service Labor Relations Board

Chapter 10 establishes a Foreign Service Labor Relations Board (FSLRB) as an entity under the FLRA to manage this statutory program. The FLRA was itself established by the CSRA and manages the Civil Service labor-management relations program. The FSLRB is headed by the Chairperson of the FLRA and, in addition, has two public members appointed by the Chairperson of the Board from nominees approved by the agencies and the labor organizations. As with the EMRC which it replaced, the FSLRB is charged with supervising elections and certifying exclusive bargaining agents; deciding unfair labor practice complaints and issues relating to the obligation to bargain in good faith; resolving disputes concerning the effect, interpretation, or breach of a collective bargaining agreement; and taking other actions necessary to effectuate the provisions of Chapter 10. Decisions of the Board are to be consistent with FLRA decisions except where certain circumstances require otherwise; but FSLRB decisions will not be precedents for the FLRA.

c. The General Counsel

Chapter 10 introduces into the Foreign Service labor-management relations system a new independent third party, the General Counsel, an entity of the FLRA. The General Counsel of the FLRA is required to investigate alleged charges of unfair labor practices by an agency or by a labor organization and may thereafter issue a complaint pursuant to such charges in which case a hearing will be held.

d. Foreign Service Impasse Disputes Panel

Chapter 10 retains from E.O. 11636 the concept of a Disputes Panel to resolve collective bargaining impasses, establishing a Foreign Service Impasse Disputes Panel (FSIDP) within the FLRA. The Panel, selected by the

4H2

Chairperson of the FLRA, is composed of five members: two Foreign Service members who are not management officials, confidential employees or labor organization officials; one individual employed by the Department of Labor; one member of the FSIP; and one public member who does not hold any other office or position in the Government. The Chairperson of the FSLRB sets the term of office for Panel members and determines who shall chair it. Whereas in the past the Panel could only recommend settlements of negotiation impasses, it is authorized by Chapter 10 to make final and binding decisions to resolve such disputes.

e. Institutional Grievance/Judicial Review

Another change from the E.O., but which is entirely consistent with Title VII, concerns the right of the union to file "institutional grievances." Section 1014(a) of the law provides that any dispute over the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through negotiated procedures which shall include provisions for appeal to the Foreign Service Grievance Board. There is also a provision for review by the FSLRB, at the request of either party, of Grievance Board actions in resolving an implementation dispute. The scope of such review is the same as that of FLRA review of arbitration awards under Title VII, i.e., because it is contrary to law, rule or regulation or any other grounds similar to those applied by Federal Courts in private sector labor-management relations. Grievance Board action becomes final and binding on the parties to an implementation dispute if no request for review is filed within thirty days. The resolutions of such implementation disputes are not subject to judicial review. This does not, however, affect the right of judicial review of an individual grievance, as provided for in Chapter 11 of the FSA.

4I. Specific Policy Guidelines

1. Employee Rights

a. Every employee has the right to form, join or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right except as otherwise provided in Title VII or Chapter 10, as appropriate, including the right:

(1) To act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Administrator and other Government officials, including the Congress, or other appropriate authorities; and

(2) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under Title VII or Chapter 10, as appropriate.

4I1

b. Nothing in this section shall authorize participation in the management of a labor organization by an Agency management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with the law or with the official functions of such employee. For example, those persons (whether employees, confidential employees, or management officials) whose official duties involve the formulation or administration of personnel policies (other than in a purely clerical capacity), administration of the employee-management relations system, or representation of Agency management in the process of negotiation or consultation with an organization, including clerical support, shall not act for purposes of negotiation or consultation as representatives of a labor organization.

c. No employee or applicant for employment shall as a condition of employment, assignment, promotion, or retention be required to join or refrain from joining any employee organization.

2. Representation Rights and Duties of Unions

a. A labor organization which has been accorded exclusive recognition under Title VII or Chapter 10 is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit as defined in each Act. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

b. An exclusive representative shall be given the opportunity to be represented at:

(1) Any formal discussion between one or more representatives of the Agency and one or more employees in the unit concerning any grievance as defined in the AID/AFGE Agreement; or Section 1101, FSA; or any personnel policy or practice or other general condition of employment; and

(2) Any examination of an employee by an Agency representative in connection with an investigation if:

(a) The employee reasonably believes that the examination may result in disciplinary action against the employee, and

(b) The employee requests such representation.

(3) The Agency shall annually inform employees of their rights under paragraph 2b(2) above.

4I2

c. The Agency and the exclusive representatives, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at an agreement concerning conditions of employment affecting employees of each unit. In addition, the Agency and the applicable exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of Title VII or section 1010 of Chapter 10, as appropriate, to assist in any negotiation.

d. The rights of an exclusive representative under this section shall not preclude:

(1) An employee being represented in any grievance proceeding by an attorney or other representative of the employee's own choosing, other than the exclusive representative; or

(2) Exercising grievance or appeal rights established by law, rule, or regulation; except as required by Section 7114 of the CSRA and the AID/AFGE agreement.

3. Management Rights

a. Subject to subsection 3b below, nothing in these regulations shall affect the authority of any Agency management official in accordance with applicable law:

(1) To determine the mission, budget, organization, internal security practices of the Agency and the number of employees in the Agency;

(2) To hire, assign, direct, lay off, and retain individuals in the Agency or to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Foreign Service to be promoted and to remove the name of or delay promotion of any member in accordance with regulations prescribed under section 605(b) of the FSA;

(3) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Agency shall be conducted;

(4) To fill positions from any appropriate source;

(5) To determine the need for uniform personnel policies and procedures between or among the agencies to which Chapter 10 applies; and

(6) To take whatever actions may be necessary to carry out the mission of the Agency during emergencies.

b. Nothing in this section shall preclude the Agency and the exclusive representative from negotiating:

413b

(1) At the election of the Agency, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) Procedures which Agency management officials will observe in exercising any function under this section; or

(3) Appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

4. Negotiations

a. It is the duty of the Agency and the exclusive representatives to negotiate in good faith. This duty includes the obligation:

(1) To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) To meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) For the Agency to furnish to the exclusive representatives, or its authorized representative, upon request and to the extent not prohibited by law, data:

(a) Which is normally maintained by the Agency in the regular course of business;

(b) Which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(c) Which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining.

(5) If agreement is reached, to execute, upon request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

b. An agreement between the Agency and the exclusive representative is subject to approval by the Administrator or designee.

4I4b

(1) The Administrator or designee shall approve the agreement within thirty days after the date the agreement is executed unless the Administrator or designee finds in writing that the agreement is contrary to applicable law, rule or regulation.

(2) Unless the Administrator or designee disapproves the agreement by making a finding under paragraph 4b(1) above, the agreement shall take effect and shall be binding on the Agency and the exclusive representative subject to all applicable laws, orders, and regulations.

c. In the event the parties are unable to agree whether an obligation to negotiate exists with respect to a matter, the exclusive representatives may file an application with the FLRA or the FSLRB, as appropriate, pursuant to regulations of the Authority or the Board. The Authority or the Board will determine whether there is an obligation to negotiate.

d. When negotiations do not result in agreement, either party may as appropriate request the FSIP or the FSIDP to consider the impasse pursuant to procedures established by such Panel.

e. Decisions of the Panel shall be binding on the parties during the term of the collective bargaining agreement unless the parties agree otherwise.

5. Implementation of Labor-Management Relations at Foreign Service Posts

In accordance with the FSA, Chapter 10 - Labor Management Relations, AFSA and the Agency have agreed to the following policy and guidelines for its implementation at individual Foreign Service posts.

a. In order to carry out its responsibility to represent all eligible Foreign Service employees at each post, AFSA will formally certify the names of its official representatives at each post to the Chief, M/PM/LR. M/PM/LR will notify the AID management officials at such posts of the AFSA certification and will authorize these management officials to deal with the certified AFSA representatives in accordance with these guidelines. Collective dealings at individual posts may not assume the character of formal consultation, nor extend to employees at any other post or be regarded as a precedent at any other individual post.

Once certified, local AFSA representatives shall remain certified until AFSA officially notifies M/PM/LR of their replacement, or until their final departure from the post where certified, whichever occurs first.

b. Certified AFSA representatives are authorized to meet with the designated AID management officials regarding implementation of (a) Agency personnel regulations, and (b) agreements reached between AFSA and AID under Chapter 10.

415b

(1) Discussions concerning the implementation of appropriate Agency regulations, or agreements reached between AFSA and the Agency under Chapter 10 at the post may be initiated by either party. The other party shall grant such request for discussion as soon as practicable. In requesting or granting requests for discussion at posts under these guidelines, due consideration should be given to the amount of official time to be used for such discussions. Official time is for performance of Agency business and only insofar as these discussions do not interfere with the performance of the local AFSA representatives' official duties should official time be authorized for such discussions.

(2) When designated AID management officials and the local AFSA representatives agree that a new post policy or procedure should be instituted or an existing post policy or procedure be changed, the new or revised policy or procedure will be published by post notice to employees or brought to the attention of all employees by some other appropriate means (e.g, circulation of a memorandum by the Mission Director or designee who must be a management official or confidential employee). The notice accompanying such new or revised local policies or procedures should indicate that the policies or procedures in question are the product of discussions between the post's AID management officials and local AFSA representatives.

Copies of such new or revised local policies or procedures must be sent by the designated AID management official to M/PM/LR by memorandum, and copies should be sent by AFSA local representatives to AFSA/Washington for information.

(3) New or revised local policies or procedures reached under these guidelines concerning implementation of appropriate Agency regulations, or agreements reached between the Agency and AFSA under Chapter 10, shall continue until changed by mutual agreement of the post's AID management officials and the local AFSA representatives.

c. In addition, local AFSA representatives may raise for discussion with the designated AID management officials matters within the scope of Chapter 10 which are entirely within the discretion of the post's management officials.

(1) Discussions concerning those personnel policies and procedures which are within the discretion of the post management may be requested by the certified AFSA representatives at any time.

(2) New or revised local policies or procedures reached in this section concerning matters entirely within the discretion of the post's AID management officials shall be subject to review any time at the request of either party except where a term agreement has been reached. New or revised local policies or procedures reached under these guidelines shall be reviewed upon the arrival at post of a new principal officer. Such review shall be at the convenience of the new principal officer or acting principal officer.

415c

(3) In case of failure to grant a request for discussion under this section or to agree on the resolution of a local issue after discussion under either paragraphs 5b or 5c above, the matter will be submitted to the Agency and AFSA respectively for resolution in accordance with Chapter 10.

(4) The range of subjects which the local AFSA representatives and the AID management officials may appropriately discuss will vary in accordance with the size, location, and other circumstances of the post and cannot be enumerated in advance.

(5) The following examples are illustrative, not inclusive, of local policy matters which may be raised by local AFSA representatives: local post-funded training; permissible employee activities; post parking regulations; duty rosters and work schedules; housing and furnishings, including temporary housing; local handling, and procedures for local clearance, of household effects; procedures for obtaining local medical care; and use of post facilities.

(6) The following examples are illustrative, not inclusive, of matters which would not be appropriate for local discussion under this section: program matters; post security policies; policies confined to management officials and confidential employees; municipal, state or national laws; budget; and matters under consultation between the Agency and AFSA under Chapter 10.

d. These guidelines concern only collective dealings between AID management officials and the certified AFSA representatives at Foreign Service posts. Nothing in these guidelines shall preclude an individual employee, regardless of whether the employee is a member of an organization, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulation, or Chapter 10, or from personally selecting a representative in a grievance proceeding.

e. These guidelines do not affect the procedures of the Foreign Service Grievance System.

f. Questions concerning the interpretation or application of these guide lines should be referred by AID management officials to M/PM/LR and by local AFSA representatives to AFSA/Washington.

6. Unfair Labor Practices

a. It shall be an unfair labor practice for the Agency:

(1) To interfere with, restrain, or coerce any employee in the exercise of any right under Title VII or Chapter 10;

416a

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facili ties on an impartial basis to labor organizations having equivalent status;

(4) To discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this Chapter;

(5) To refuse to consult or negotiate in good faith with a labor organization as required under Title VII or Chapter 10;

(6) To fail or refuse to cooperate in impasse procedures and impasse decisions, as required under Title VII or Chapter 10;

(7) To enforce any rule or regulation (other than a rule or regulation implementing section 2302 of Title V, U.S.C., "Prohibited Personnel Practices," which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule was prescribed; or

(8) To fail or refuse otherwise to comply with any provision of Title VII or Chapter 10 as appropriate.

b. It shall be an unfair labor practice for a labor organization:

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under Title VII or Chapter 10, as appropriate;

(2) To cause or attempt to cause the Agency to discriminate against any employee in the exercise by the employee of any right under Title VII or Chapter 10;

(3) To coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) To discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, religion, national origin, sex, age, preferential or nonpreferential Civil Service status, political affiliation, marital status, or handicapping condition;

4I6b

(5) To refuse to consult or negotiate in good faith with the Agency as required under Title VII or Chapter 10;

(6) To fail or refuse to cooperate in impasse procedures and impasse decisions, as required under Title VII or Chapter 10;

(7) To call or participate in a strike, work stoppage, or slow-down, or to picket the Agency in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Agency's operations shall not be considered an unfair labor practice);

(8) To condone any unfair labor practice described in paragraph 6b(7) above by failing to take action to prevent or stop such activity;

(9) To deny membership to any employee in the unit represented by the labor organization except:

(a) For failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(b) In the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and Title VII or Chapter 10; or

(10) To fail or refuse otherwise to comply with any provision of Title VII or Chapter 10.

c. The expression of any personal view, argument, or opinion, or the making of any statement, which:

(1) Publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) Corrects the record with respect to any false or misleading statement made by any person; or

(3) Informs employees of the Government's policy relating to labor-management relations and representation, if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions, shall not:

(a) Constitute an unfair labor practice under Title VII or Chapter 10, or

(b) Constitute grounds for the setting aside of any election conducted under Title VII or Chapter 10.

7. Negotiated Agreement

a. A three-year agreement automatically renewable for successive one-year periods has been negotiated between A.I.D. and AFGE. Copies of the agreement (Att. B) have been distributed to all A.I.D. members of the Civil Service Bargaining Unit, supervisors and management officials.

b. Agreement provisions will govern if there is any conflict between other Agency instructions/directives and the agreement.

8. Dues Deductions

a. If the Agency has received from any Foreign Service employee or employee in the AFGE bargaining unit a written assignment authorizing the Agency to deduct from the salary of that employee amounts for the payment of regular and periodic dues of the exclusive representative, the Agency shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representatives or employees. An assignment may not be revoked for a period of one year or in accordance with an agreement between the parties.

b. An assignment for deductions of dues shall terminate when:

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Agency;

(3) the individual is suspended or expelled from membership in the exclusive representative; or

(4) a member of the AFGE bargaining unit moves into a supervisory or other position excluded from the unit.

9. Use of Official Time

a. The following shall apply to the use of official time:

(1) Any member of a bargaining unit representing the exclusive representative of that unit in the negotiation of a collective bargaining agreement under Title VII or Ch. 10 shall be authorized official time (excused absence) for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Agency for such purposes.

4I9a

(2) Activities performed by any employee relating to the internal business of a labor organization, such as the solicitation of membership, distribution of literature, election of union officials, and collection of dues shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph 9a(1) above, the FLRA or the FSLRB, as appropriate, shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority or Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs 9a(1), (2) and (3) above, any employee-member of the unit shall be granted official time in accordance with agreements between the parties.

b. Organization meetings, whether open to all employees, or closed, shall be conducted during nonduty hours of the employees involved.

4J. Savings Provision

Policies, regulations and procedures established under and decisions issued under E.O.s 11491 or 11636 or under any other E.O., as in effect on the effective date of the FSA or the CSRA, as appropriate, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of the law or by regulations or decisions issued pursuant to the Acts, or applicable judicial decisions, or by agreement between the parties, as may be appropriate.

ATTACHMENT 4A

TITLE VII, CIVIL SERVICE REFORM ACT OF 1978

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER I—GENERAL PROVISIONS

§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1192.)

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1192.)

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include—

(A) the General Accounting Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority; or

(G) the Federal Service Impasses Panel;

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

76-352 O - 81 - 9

(5) "dues" means dues, fees, and assessments;

(6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title:

(8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) "grievance" means any complaint—

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning—

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation,

or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1192; amended Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2168.)

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

(A) the date on which the member's successor takes office, or

(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1196.)

§ 7105. Powers and duties of the Authority

(a) (1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find neces-

sary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1196.)

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

(Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1198.)

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

§ 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority—

(1) by any person alleging—

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such

election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1199.)

§ 7112. Determination of appropriate units for labor organization representation

(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination

will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1200.)

§ 7113. National consultation rights

(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1202.)

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pur-

(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1201.)

§ 7114. Representation rights and duties

(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

suant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1203.)

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be

raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1204.)

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2) (B) of this subsection, the agency shall—

(A) file with the Authority a statement—

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1205.)

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date

on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1207.)

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding

on such parties during the term of the agreement, unless the parties agree otherwise. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1208.)

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanctions, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section

shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1210.)

SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include procedures that—

(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(B) assure such an employee the right to present a grievance in the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely

files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1211; amended Pub. L. 96–54, Aug. 14, 1979, 93 Stat. 383.)

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title). (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1212.)

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may

modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1213.)

SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1214.)

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1214.)

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1215.)

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1215.)

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter. (Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1215.)

Attachment 4B
Chapter 4
Handbook 24 (TM 24:19)

AGREEMENT BETWEEN

THE AGENCY FOR INTERNATIONAL DEVELOPMENT

AND

THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

June 15, 1981

TABLE OF CONTENTS

		Page
Preamble		
Article 1	Parties to the Agreement and Definition of Unit	1
Article 2	Duration and Scope of Agreement	2
Article 3	Employee Rights and Responsibilities	3
Article 4	Union Representation Rights and Duties	4
Article 5	Labor Management Committee and Consultation	5
Article 6	Officers and Stewards	6
Article 7	Official Time	7
Article 8	Dues Withholding	9
Article 9	Union Use of Facilities and Administrative Services	12
Article 10	Management Rights and Responsibilities	14
Article 11	Reassignment	15
Article 12	Details and Temporary Promotions	16
Article 13	Merit Promotion	17
Article 14	Position Classification/Performance Appraisal	22
Article 15	Career Development and Training	24
Article 16	Transfer of Function	25

		Page
Article 17	Reduction-in-Force.....	26
Article 18	Official Personnel Folder.....	28
Article 19	Hours of Work and Leave.....	29
	Sec. 2 Annual Leave.....	29
	Sec. 3 Sick Leave.....	30
	Sec. 4 Court Leave.....	30
	Sec. 5 Maternity Leave.....	30
	Sec. 6 Excused Absence.....	31
	Sec. 7 Hazardous Weather Dismissal Policy..	31
	Sec. 8 Leave Approval.....	31
	Sec. 9 Leave Records.....	31
Article 20	Official Travel.....	32
Article 21	Parking and Transportation.....	33
Article 22	Health, Safety and Welfare.....	34
Article 23	Contracting for Services Outside the Agency.....	35
Article 24	Equal Opportunity.....	36
Article 25	Overtime.....	37
Article 26	Within-Grade Pay Increases.....	38
Article 27	Payment of Earnings.....	40
Article 28	Disciplinary Actions.....	41
Article 29	Adverse Actions.....	43
Article 30	Actions Based on Unacceptable Performance.....	45
Article 31	Grievance and Arbitration Procedure.....	47
	Signatory Page.....	52

PREAMBLE

The Agency for International Development (A.I.D.) and the American Federation of Government Employees, AFL-CIO, affirm that the public purposes to which A.I.D. is dedicated can be advanced thru understanding and cooperation achieved thru collective bargaining in those areas in which bargaining is appropriate in the Federal Service.

NOW, THEREFORE, with the foregoing in mind, the Union and the Agency, in order to advance A.I.D.'s objectives and the well-being of its employees, enter into this Agreement which shall constitute the negotiated general Agreement between A.I.D. and the American Federation of Government Employees, AFL-CIO.

ARTICLE 1

PARTIES TO THE AGREEMENT AND DEFINITION OF UNIT

This Agreement is made and entered into, by and between the Agency for International Development (A.I.D.), hereinafter referred to as the "Agency", and the American Federation of Government Employees, AFL-CIO, hereinafter referred to as the "Union" and collectively known as the "Parties", under authority of Title VII of The Civil Service Reform Act of 1978 (CSRA), hereinafter referred to as Title VII.

The Unit covered by this Agreement per ASLMR Case No. 22-2801 (RO) consists of all professional and non-professional General Schedule and Wage Grade Employees, Administratively Determined employees (AD) and Student Aides employed by the Agency for International Development, Agency-wide. Excluded from the unit are any supervisor, management official, confidential employee, employee engaged in personnel work in other than a purely clerical capacity, employees in the immediate Office of the Inspector General, the Office of Inspections and Investigations, the Office of Security and Office of the Inspector General for Audit/Washington, and Foreign Service employees in accordance with Section 7103 and Section 7112(b) of Title VII.

ARTICLE 2

DURATION AND SCOPE OF AGREEMENT

Section 1. This Agreement shall remain in full force for two years. It shall renew itself automatically for each successive one-year period, effective on the expiration date of this agreement, unless written notice is given by either Party to the other not less than 60 days, nor more than 90 days prior to the termination date, and/or subsequent termination date that it is desired to amend, modify, or terminate the Agreement. In the event notice is given to amend, modify, or terminate, the Parties shall begin negotiations not later than 30 days prior to the termination date. If negotiations are not concluded prior to the expiration date, this Agreement will continue in full force and effect until a new Agreement is signed.

Section 2. The provisions of this Agreement may be amended or modified at any time by the written mutual Agreement of the Parties.

Section 3. The Agency agrees to reproduce this Agreement and provide a copy to each member of the Unit. Three hundred (300) copies will be furnished to the Union.

ARTICLE 3

EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 1. Each employee has the right, freely and without fear of penalty or reprisal, to form, join, and assist labor organizations or refrain from such activity; and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in Title VII, the right to assist a labor organization extends to participation in the management of the organization, and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the Agency, the Executive Branch, the Congress, or other appropriate authority.

Section 2. The Parties also affirm the rights of employees to be free from discrimination based upon race, color, religion, sex, national origin, age, physical or mental handicap, or partisan political affiliation, as defined and prescribed in Title 5, USC, Section 7153; Title VII of the Civil Rights Act of 1964, as amended in 1972; Executive Orders 11478 and 11222 (Code of Ethics); 29CFR, Part 1613 and FPM Regulation Part 720, Section 720.901. The Agency will make every effort to assure equitable treatment for all personnel.

Section 3. The Parties agree that they will work cooperatively to improve the work environment, work relationships, and job satisfactions of employees.

Section 4. It is understood that from time to time employees participation will be requested in approved charity campaigns in response to community needs, bond drives, or other such activities not related to the performance of official duties. Such requests are not intended nor should they be interpreted as requiring that employees participate. The Parties acknowledge that the decision to participate is the sole choice of the individual employee.

Section 5. Nothing in this Agreement shall require an employee to become or remain a member of a labor organization, or to pay money to the organization, except pursuant to a voluntary written authorization by a member for the payment of dues thru payroll deductions.

ARTICLE 4

UNION REPRESENTATION RIGHTS AND DUTIES

Section 1. The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to labor organization membership.

Section 2. The Union shall be given the opportunity to be represented at:

A. Any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

B. Any examination of an employee in the unit by a representative of the Agency in connection with an investigation if,

(1) The employee reasonably believes that the examination may result in disciplinary action against the employee; and

(2) The employee requests representation.

ARTICLE 5

LABOR MANAGEMENT COMMITTEE AND CONSULTATION

Section 1. The Parties will establish a Labor/Management Committee for the purpose of reviewing and discussing their common interest in maintaining labor-management cooperation.

Concerning the establishment and operation of the Committee, the Parties agree to the following:

A. Each Party will name three representatives and three alternates to the Committee. The representatives and the alternates will be responsible officials of each Party, capable of fully representing their organizations. Resource persons may be designated when necessary to assist in a specific matter scheduled for discussion.

B. Meetings will be held no less than once each quarter of the calendar year, preferably in January, April, July, and October.

C. The Committee will establish its own procedures and methods of operation concerning such items as agenda, meeting dates and location, etc. Agendas will be exchanged by the Parties ten (10) working days prior to meetings. However, this will not prevent issues being added to the agenda up to 24 hours before the meeting. However, grievances properly related to Article 31, Grievance and Arbitration Procedure, of this Agreement, will not be discussed.

D. Discussions on implementation of regulations dealing with conditions of employment or the contract will be a Committee function and may include investigations, studies, reports and recommendations.

Section 2. The Agency will provide ten (10) working days for the Union to indicate whether it wishes further consultation/negotiations on matters submitted to the Union for comment. If the Union requests such further consultation/negotiations, the Parties will arrange to take whatever additional steps are necessary to resolve the matter. Both Parties recognize, however, that occasionally there may be situations where particularly prompt action is required. In such situations, Union and Agency officials will cooperate in meeting the Agency's urgent operational requirements and the Union's need to respond on an immediate basis.

ARTICLE 6

OFFICERS AND STEWARDS

Section 1. The Parties mutually agree that an effective steward system is of value to the employees, the Union and the Agency. In recognition thereof, the Agency will recognize a maximum of twenty (20) stewards in addition to the Chief Steward and other elected officers of the Union.

Section 2. The Agency will recognize one steward for every 100 employees in the bargaining unit within the maximum of 20 stewards. The Union agrees that not more than two (2) stewards shall be employed by a single Bureau or Office within a building. Where less than 100 employees are located in a building, the Union may assign one steward to represent these employees within the overall limitation of 20 stewards. The Union will make every effort to assign a steward to the Bureau and Building in which he is currently employed; however, the Parties recognize this may not be possible in every case.

Section 3. Within ninety (90) days after the effective date of this agreement, the Union will provide the Agency with a listing of officers and stewards, indicating the stewards' assigned organizational units of responsibility. Such listing will also be posted on Union bulletin boards.

Section 4. Union representatives and staff not employed by the Agency will be allowed admission to buildings and offices of the Agency for purposes of meeting with local Union officers, stewards, and Agency representatives, provided the Union representatives are properly identified.

Section 5. The Agency will advise the Union prior to placing Union officers or stewards on TDY for more than ten (10) working days.

ARTICLE 7

OFFICIAL TIME

Section 1. Employees of the Agency as defined in Section 7103 (a)(2) of Title VII, who are representatives of the Union are entitled to the use of official time as reasonable and necessary to engage in formal meetings with the Agency and to represent employees in grievance cases.

Section 2. Employees of the Agency as defined in Section 7103 (a)(2) of Title VII, who are stewards are entitled to the use of official time as reasonable and necessary to assist employees in the preparation of grievances and to represent employees in the grievance procedure.

Section 3. Employees in the bargaining unit are entitled to the use of official time as reasonable and necessary to discuss and prepare a grievance or a potential grievance and to be present at meetings concerning their grievance.

Section 4. The initial determination of what is reasonable time is primarily a supervisory responsibility.

Section 5. The use of official time as permitted in Sections 1, 2 and 3 above specifically excludes internal Union business.

Section 6. Officers, stewards and employees who find it necessary to be absent from their work during regular duty hours as provided for above shall:

A. Personally inform the supervisor and obtain authorization to leave his/her regularly assigned duties. Supervisors will concur unless they determine that an urgent work situation demands otherwise.

B. Personally provide supervisors with notification at the time of their return to regular work duty and notify the timekeeper of the time away from regular duty.

Section 7. The provisions of this article apply to eligible officers and stewards five (5) working days, or sooner if mutually agreed after the Union identifies such individuals in writing to the Chief, Labor Relations Staff.

Section 8. The Union may request that each of its officers and stewards selected to attend training programs relative to the interpretation and implementation of this agreement or other matters of mutual concern be granted official time of 240 hours total per contract year. A maximum of two officers or stewards may use 40 hours each. Other officers or stewards may utilize a maximum of 24 hours per contract year not to exceed the total of 240 hours per contract year. However, official time may not be granted for internal Union business. The Agency recognizes the usefulness of granting official time for these purposes.

ARTICLE 8

Dues Withholding

Section 1. The Agency agrees to withhold dues for employees:

A. Who are identified to the Agency by the Union as members of the Union in good standing;

B. Who voluntarily complete and submit to the Union for transmittal to the Agency, Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues;

C. Who receive compensation sufficient to cover the total amount of the deduction; and

D. Who are in the unit.

Section 2. The Union agrees to:

A. Inform and educate its members on the voluntary nature of the system for the deduction of Union dues including the conditions under which the deduction may be revoked;

B. Purchase and distribute to its members Standard Form 1187;

C. Notify the Labor Relations Office, in writing, of the current dues schedule and any changes thereto as they occur; the President, Vice-President, Secretary, or Treasurer of AFGE Local 1534 are authorized to certify the dues schedule or changes thereto and to certify SF 1187(s) and any other documentation relating to withholding of Union dues;

D. Forward properly executed and certified SF 1187(s) to the Labor Relations Office on a timely basis;

E. Promptly forward an employee's revocation (memorandum or Standard Form 1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) to the Labor Relations Office when such revocation is submitted to the Union;

F. Notify the Agency within two (2) pay periods of cases where inadvertent dues deduction delinquencies by the Agency appear to have occurred based on the remittance listing referred to in Section 3.F. below.

Section 3. The Agency agrees to:

A. Permit and process voluntary deduction of dues in accordance with this Agreement;

B. Withhold dues on a biweekly basis; when advised by the Union per Section 2.F. above, the Agency will withhold additional amounts equal to the inadvertent delinquency at the rate of one additional withholding per pay period until such time as the delinquency is satisfied;

C. Withhold new amounts of dues in the case of changes in the dues schedule upon receipt of appropriate certification of such changes;

D. Transmit remittance checks payable to AFGE Local 1534 to the Treasurer, at the office of the Local, together with the remittance listing described below and a copy of all revocation notices received in the payroll office or Labor Relations Office;

E. Adjust the amount deducted for each member who has requested voluntary deduction of dues to the rate applicable to the member's new grade level, when written notification of such adjustment is received by Labor Relations Office from the Union;

F. Provide a remittance listing for each pay period which shall include the name of each employee for whom a deduction is being made, the amount deducted for each employee, and the gross amount deducted;

G. Notify in writing employees concerned, as appropriate, and the Union of the discontinuance of dues deductions by the Agency for reasons of ineligibility or other pertinent reason such as separation or LWOP status;

H. Notify in writing those new applicants for Union dues deduction who are found by the Agency to be ineligible for such deductions, with a copy of such notification to be provided to the Union.

Section 4. The effective dates for dues withholding actions under this Agreement are as follows:

A. Starting dues withholding -- Beginning of first full pay period after date of receipt in payroll office of properly executed and certificated SF 1187(s);

B. Change in dues schedule -- Beginning of first full pay period after receipt in payroll office of certification of change in the dues schedule;

C. Revocation by employee -- Beginning of first full pay period following March 1 of any year after the revocation is received in the payroll office;

D. Termination due to loss of membership in good standing -- Beginning of first pay period after receipt in payroll office of notification from Union;

E. Termination due to separation -- Termination of deduction will take place in the pay period immediately following that pay period in which the separation became effective;

F. Change in amount of dues deduction because of change in member's grade level -- Beginning of first full pay period after receipt in payroll office of notification from Union;

G. Termination of dues withholding due to loss of exclusive recognition -- Beginning of first full pay period following loss of exclusive recognition.

ARTICLE 9

UNION USE OF FACILITIES AND ADMINISTRATIVE SERVICES

Section 1. The Agency will provide to the Union on a monthly basis a copy of the latest published Agency-wide staffing pattern.

Section 2. The Agency agrees to furnish office space consisting of 2 adjoining rooms, one being a small conference room at least 144 square feet for meetings and grievance discussions in privacy with employees at Main State or any agreed upon central location.

Section 3. A Union representative is entitled to reasonable privacy when discussing a grievance with an employee. The Agency will provide the Union with a list of conference rooms in all AID-occupied buildings. This list will include control offices and individuals to contact for each room. The Agency will inform the control offices that the Union may use these rooms when reservations are made in the usual procedure.

Section 4.

A. The Union may use Agency interoffice distribution systems to transmit correspondence that is individually addressed, in accordance with appropriate regulations, to employees and to Agency officials on matters appropriate to this Agreement. Bulk correspondence must be delivered by the Union to the Agency's Central Mail Room.

B. While prior review by the Agency is not required, material submitted by the Union for distribution may not violate any law, Executive Order, regulation, or this Agreement; contain scurrilous or libelous material; deal with partisan political matters; or falsely malign the character of any individual or the motives of any organization.

C. A box will be maintained in the Agency's Central Mail Room for the Union's incoming mail.

Section 5.

A. The Agency agrees to provide to the Union one (1) bulletin board approximately 24" x 18" in each building where there are twenty-five (25) or more employees, except that three (3) such boards will be provided in Universal North and two (2) larger boards will be provided in New State.

The list of bulletin board placements contained in the previous Agreement shall be reviewed and a mutually agreed decision made as to any changes in location or additions or subtractions from that list.

B. While prior review by the Agency is not required, material posted by the Union on bulletin boards may not violate any law, Executive Order, regulation or this Agreement; contain scurrilous or libelous material; deal with partisan political matters; or falsely malign the character of any individual or the motives of any organization.

Section 6. The Agency will provide to the Union one (1) set of Handbooks relating to personnel administration, and additions and changes as issued. To the extent that they relate to the Union's role under Title VII and this Agreement, the Agency will, upon request, provide a copy of other pertinent Handbooks or applicable portions thereof.

Section 7. The Agency will install and maintain one telephone in the Union's office. Long distance calls, whether placed through the Federal Telecommunications System (FTS) or otherwise, are not authorized.

ARTICLE 10

MANAGEMENT RIGHTS AND RESPONSIBILITIES

Section 1. In the administration of all matters covered by this Agreement, the Agency and the Union are governed by existing or future laws and the regulations of appropriate authorities; including policies set forth in the Federal Personnel Manual.

Section 2. The Agency has the right to make rules and regulations relating to personnel policy, procedures, practices, and working conditions of employees. The Agency will give due regard to its obligation to meet and consult with the Union in good faith. To the extent that provisions of any Agency instruction or directive is in conflict with this Agreement, the provisions of the Agreement shall govern.

Section 3. Management officials of the Agency retain the right:

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

(2) in accordance with applicable laws and the provisions of this Agreement:

(a) to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(b) to assign work, to make determinations with respect to contracting out, and to determine the personnel by whom Agency operations shall be conducted;

(c) with respect to filling positions, to make selections for appointments from:

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(d) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

ARTICLE 11

REASSIGNMENT

Section 1. A reassignment, as defined by the Office of Personnel Management is "a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion."

Section 2. While an employee's consent is not a prerequisite to reassignment, the Agency will consider the employee's views prior to instituting a reassignment.

Section 3. If after a reasonable period of time in a position to which an employee has been reassigned, including such training for that position as may have been provided, the Agency concludes that the employee is not performing satisfactorily, the Agency will attempt to reassign the employee to another position at his grade level for which he is qualified.

Section 4. Whenever the Agency takes a personnel action affecting an employee's assignment for a period of 30 days or more, the Agency agrees to issue an SF-50 to the individual employee.

ARTICLE 12

DETAILS AND TEMPORARY PROMOTIONS

Section 1. While an employee's consent is not a prerequisite to any detail, the Agency will:

A. Not detail an employee to evade the open competitive principle of the merit system or proper classification of positions;

B. Use the Merit Promotion Program to select an employee for detail to a vacant higher grade position for the purpose of training or evaluating a possible successor;

C. Not detail an employee to duties for which he is not qualified under the standards of the OPM except in an emergency.

D. Issue an SF-50, Notification of Personnel Action, for details of thirty (30) days or more and furnish to the employee a copy of the position description and/or a statement of duties to be performed while on detail;

E. Consider an employee for temporary promotion rather than detail to a position vacated by reason of the incumbent's temporary absence.

Section 2. Merit procedures will apply to temporary promotions of over 120 days. Such temporary promotions will not exceed one year unless the U.S. Office of Personnel Management approves an extension of another year.

Temporary promotions will be posted as soon as the supervisor determines that the position will remain vacant for more than 120 days.

Section 3. Details to a lower grade will not be used against an employee in any future personnel action. The supervisor will notify the shop steward of details to lower graded positions.

Section 4. Encumbered positions will not remain unclassified for more than 120 days.

ARTICLE 13

MERIT PROMOTION

Section 1. Merit principles will govern the filling of vacant positions within the Agency.

Section 2. The Agency will announce all vacancies that are required to be filled thru competitive procedures and for which bargaining unit employees are eligible to apply.

Section 3. It is agreed that the Agency will utilize to the maximum extent possible the skills and talents of its employees. Consideration will first be given in filling vacant positions to employees within the Agency before expanding the area of consideration, except in established shortage categories.

A shortage category shall be established based on a consideration of shortage categories established by the U.S. Office of Personnel Management, a review of applicants for the previous vacancy, a review of employees in the AOSC and in the pertinent grade level and in any case where fewer than three in-house candidates are deemed qualified by OPM's X-118 standards. The Agency will provide to the Union a quarterly list of shortage categories as of the ending date of the calendar quarter. The list will be provided to the Union within fifteen (15) days of the end of the quarter.

Section 4. An employee at any time may apply for a promotion in advance of the vacancy occurring or at the time the vacancy actually exists. Employees who have applications on file who are absent from duty during the posting period due to leave or TDY will have their applications considered by the panel if they have met the basic qualifications.

Section 5. Employees should keep the experience, education, and training portions of their personnel records up-to-date, including information about self-development activities, unpaid or volunteer work, and additional education and training gained outside AID. SF-172, "Supplemental Experience and Qualifications Statement" should be used for this purpose.

Section 6. Applicants determined by PM to be ineligible to compete for a vacancy will be so notified with the specific reasons for their lack of eligibility.

Section 7. To be eligible for promotion employees must meet X-118 Qualification Standards.

Section 8. Prior to filling a position under the merit promotion procedure, employees who were demoted within AID without personal cause and not at their request will be given priority placement consideration. Employees will be given priority placement consideration at the formerly held grade and any intervening grade for which they are qualified.

Section 9. The names of employees who have been downgraded without cause and are eligible for priority consideration will be automatically referred to the selecting official on a separate list. No application or supervisory appraisal will be required.

Section 10. The merit promotion procedures do not apply to a promotion or reassignment resulting from a remedy to a grievance under Article 31.

Section 11. Merit promotion procedures apply to a reassignment or demotion to a position with more promotion potential than the position last held, except as permitted by reduction-in-force regulations and Agency placement procedures for employees entitled to grade and pay retention.

Section 12. Neither the supervisor nor the selecting officer will serve on the Merit Promotion Panel. Whenever possible, technical resource persons serving as panel members will not come from the selecting office, except when the technical expertise is available only in that office. If necessary, the supervisor or office representative may, at the request of the panel, be called upon to define the position or provide such additional information as the panel may require. In the case of new or critical positions, the supervisor or his representative may request the opportunity to describe the nature of the position to the panel.

Section 13. Supervisory appraisals and/or evaluations of past performance which are used in this Merit Promotion Program shall be reviewed by the employee prior to the ranking panel's consideration of the employee's promotion application.

Section 14. Space will be provided on the appraisal form for the employee to sign and to make comments for consideration by the Merit Promotion panel.

Section 15. When there is an open announcement that will result in a roster of applicants to fill a particular type of job, standard evaluation criteria shall be developed and shall be applied uniformly to all positions filled under the vacancy announcement. Open announcements will be used for one year or less.

Section 16. The promotion certificate which is forwarded to a selecting officer will contain the list of best qualified candidates in alphabetical order with a statement to that effect on the certificate.

A. The promotion certificate will be provided to the selecting officer within 20 working days after the closing date of the vacancy announcement.

B. The selecting officer will interview all the best qualified candidates on the promotion certificate and will notify PM of his/her decision within five working days from date of the certificate. An interview will not be required if the selecting official has knowledge, as a supervisor of the candidate within the last two years, of the candidate's background, capabilities and performance with the Agency.

C. Candidates not selected will be notified in writing as to (1) whether they were listed on the promotion certificate, (2) who was selected for the vacancy, or (3) the disposition of the vacancy if the certificate is not used.

Section 17. Every building in which employees are located shall have at least one official bulletin board that is accessible to employees. The Union shall be advised in writing of the location of official bulletin boards.

Section 18. Vacancy Announcements will be advertised on official bulletin boards for a period of ten (10) working days prior to the closing date to give employees an opportunity to bid for the job. The date of posting will be date stamped by the responsible administrative office. In addition to posting vacancy announcements on official bulletin boards, distribution will be made to employees in the competitive service on the basis of one announcement for each five such employees.

Section 19. Vacancy announcements will provide the name and phone number of an employee who may be contacted for additional job information.

Section 20. The Union shall be notified of amendments to qualification requirements contained in Merit Promotion announcements in a timely fashion prior to posting of the amendment.

Section 21. The reason for the extension or amendment of a vacancy announcement will be included on the revised announcement.

Section 22. The Agency agrees to notify the Union on a monthly basis of the final disposition of all vacancies listed in Merit Promotion announcements.

Section 23. When a written grievance is filed on merit promotions, the president of the Union or his designee will be permitted to post-audit all records used as a basis for ranking the selecting employees for any promotion action, such as: the promotion certificate, record of awards received, training, experience and education records, and all supervisory appraisals. Records will be sanitized in accordance with the Privacy Act.

Section 24. Within 60 calendar days of the signing by both Parties of the negotiated agreement, there shall be appointed a committee to be known as the Merit Promotion Review Committee, consisting of three members, at least one of whom shall be designated to that position by the Union. The purpose of the committee will be to assess the operation of this Merit Promotion system and to:

A. Perform an annual audit and review of the operation of the Merit Promotion Program. At the time of the audit/review the work of the committee will be a full-time activity whenever possible, with full support services of the Office of Personnel.

B. Within 60 calendar days of beginning the audit, a completed report with action recommendations shall be filed simultaneously with the Director of Personnel and the Union President and Vice-President for AID.

C. All committee reports that are provided to the Director of Personnel shall also be provided to the Union President.

D. The committee will be disbanded when an audit has been completed.

E. A new committee will be appointed no later than the 13th month following submission of the audit and recommendations.

Section 25. Explanation of this Merit Promotion Program shall be a part of the Agency's orientation of new employees.

Section 26. The Agency's supervisory training courses will contain an explanation of the this Merit Promotion Program, including:

A. The role and responsibility of the supervisor in the merit promotion process, and the role of the Union in monitoring its operation.

B. A full discussion of the appraisal form and its importance in the merit promotion process.

C. An explanation of the relationship of the performance rating to employees' opportunities for merit promotion and the responsibility to keep employees advised of weaknesses and strengths, how to improve performance, and similar factors which would enhance promotions.

ARTICLE 14

POSITION CLASSIFICATION/PERFORMANCE APPRAISAL

Section 1. Each employee in the bargaining unit will be evaluated on an annual basis under a performance evaluation system that includes performance standards and critical elements of performance that are significant in terms of title, series, and grade. Such standards and critical elements shall be directly related to the employee's official position description. Upon request, an employee shall be furnished a copy of his/her current position description.

Section 2. Each employee will be given a copy of the position description when assigned to a new position and will be issued an accurate position description when any changes in duties are made.

Employees will be given a copy of the performance standards and critical elements that relate to their position at the beginning of the rating period or when they are reassigned to a new position. At that time, management will explain such standards and elements to employees and answer questions.

Section 3. Performance standards and critical elements shall be valid and job related to permit objective and accurate evaluations of performance. Performance standards will be applied in a fair and equitable manner. Employees shall be given a copy of their evaluation.

Section 4. Before using performance standards and critical elements to evaluate an employee:

A. The employee will be given an opportunity to review and sign a description of such performance standards and critical elements and,

B. Such review will occur no less than three (3) months prior to the end of the rating period.

Section 5. Employees will be given at least five working days in which to review their Performance Evaluation Report (PER) before being required to sign it after the rating officer and reviewing officer have signed their statements on the PER.

Section 6. An employee may appeal the classification of his/her position to the Agency and/or to the Office of Personnel Management. During a classification appeal at the Agency level, an employee may have a Union steward or official assist him/her in presenting job elements, which the employee believes were overlooked in his/her job, to a classification specialist. A decision by the Office of Personnel Management is binding upon the employee and the Agency.

Section 7. Phrases such as "other duties as assigned" or "other related duties" used on a position description shall be understood to include duties which are relevant to the principal objectives of the position.

ARTICLE 15

CAREER DEVELOPMENT AND TRAINING

Section 1. The Agency agrees to provide appropriate training opportunities for low and middle grade employees which will assist them in pursuing career goals and upward mobility within the Agency.

Section 2. Career development for employees shall be encouraged by providing opportunities to develop career objectives. Where appropriate and practical, those opportunities will be developed jointly by employees and their supervisors, assisted as necessary by appropriate personnel specialists.

Section 3. The Agency will publicize training opportunites available to employees, whether within the Agency, at other government facilities or at selected non-Government institutions.

Section 4. Employees may discuss their training needs and interests with their supervisors and appropriate personnel specialists.

Section 5. Employees will be notified prior to the start of courses of their selection or non-selection. When a training request is disapproved, notice to the employee will include the reason for non-selection.

Section 6. All long-term training requests will be submitted and forwarded thru channels in a timely fashion for the consideration of the Selection Committee, whether endorsed or not. Employees will be notified in writing prior to the start of courses of Selection Committee decisions.

ARTICLE 16

TRANSFER OF FUNCTION

Section 1. A transfer of function, as defined by the Office of Personnel Management, is "the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area".

Section 2. When a transfer of function becomes necessary the Agency agrees:

A. To inform the Union and employees as fully and as soon as possible concerning anticipated timing and such other aspects as are known of plans to implement such transfers;

B. To provide information to employees as soon as possible to help them understand the need for such transfer of function, how they may be affected, and advise them of governing regulations;

C. To make every effort to place affected employees in vacant positions for which they qualify;

D. To notify affected employees in writing, in accordance with applicable regulations, of the impact of transfer of function on them, and their rights and benefits;

E. To counsel affected employees in seeking other employment opportunities; and

F. To counsel employees on individual rights relating to such matters as retirement and severance pay.

Section 3. Employees occupying positions to be transferred in a transfer of function to another agency shall have the opportunity to be considered for reassignment to a vacant position for which he/she is well qualified.

ARTICLE 17

REDUCTION-IN-FORCE

Section 1. It is Agency policy to minimize reductions-in-force. When reductions in personnel levels are necessary, the Agency will attempt to effect them to the extent feasible through other techniques such as controlled hiring and attrition.

Section 2. The Agency agrees:

A. To consider affected employees prior to and during a reduction-in-force for vacant positions for which they are qualified;

B. To inform affected employees when a reduction-in-force is necessary at least thirty (30) days in advance of its effective date;

C. To explain the reduction-in-force to affected employees, to help them understand its process, and how or why they are involved;

D. To permit affected employees to whom position offers have been made five (5) working days to consider such offers;

E. To counsel employees affected by reduction-in-force on alternative actions they may wish to consider, including discontinued service retirement and other retirement possibilities if applicable;

F. To counsel employees for whom no positions are located on benefits that may be available and to assist them when possible in locating other employment opportunities; and

G. To inform the Union in advance of implementation of Section 2.B. above, and to provide detailed information insofar as it is then available on numbers of employees affected.

Section 3. An employee who receives a reduction-in-force notice, if he/she so chooses, has the right to inspect pertinent regulations, and the retention register for the employee's competitive level, and those for other positions for which he/she is qualified, down to and including those in the same or equivalent grade as the position offered to the employee. If the employee is to be separated because of reduction-in-force action, this review will include all competitive levels equal to or below the grade level of his/her current position.

Section 4. The Agency shall make available to the Union information relevant to the R.I.F., including the retention registers.

Section 5. In accordance with the law and OPM regulations, when unable to offer assignment, the Agency agrees to waive the qualifications of displaced employees, provided the employee is able to perform the work in the comparable position, without undue interruption to the mission of the Agency and the employee meets the minimum requirements.

ARTICLE 18

OFFICIAL PERSONNEL FOLDER

Section 1. As provided in the Federal Personnel Manual and applicable statute, an employee shall have the right to review the contents of his/her Official Personnel Folder.

Section 2. No derogatory material of any nature which might reflect adversely upon the employee's character or government career will be placed in his Official Personnel Folder without the employee being advised by being sent a copy of the document, and informed that his/her written comments on these materials will be placed in the employee's personnel folder if he/she so desires.

ARTICLE 19

HOURS OF WORK AND LEAVE

Section 1. The Agency and the Union agree to support the continuation of flexitime experiments. The Agency agrees to negotiate with the Union prior to instituting any change in workdays or workweeks.

Section 2. Annual Leave.

A. The Agency through its supervisors will make every effort to accommodate employee requests for annual leave, consistent with the needs of their respective offices.

B. The Parties agree that it is beneficial to both the Agency and its employees to encourage regular vacations each year.

C. Every effort should be made to avoid the loss of annual leave by employees. Supervisors and employees share the responsibility for the planning and effective scheduling of annual leave for use throughout the leave year, so as to avoid situations where employees approach the end of the leave year with significant amounts of leave that must be used or forfeited. Supervisors should establish in advance vacation schedules that satisfy the wishes of and provide equity among employees. In order to assure that preferential treatment does not result, conflicts in scheduling extended leave will be resolved by supervisors as equitably as possible, giving proper consideration to such factors as priority of work, earliest service computation date, system for "rotating" the granting of leave at peak vacation times, etc. In the event of an emergency or operational demand that results in the cancellation of approved vacation leave, the employee will be advised in writing as to the reason for such cancellation. The annual leave should be rescheduled in writing for use before the end of the leave year to avoid forfeiture of annual leave.

D. If annual leave is forfeited at the end of the leave year as a result of unanticipated and unavoidable exigencies, requests for restoration of forfeited leave will be considered in accordance with A.I.D. Handbook No. 27, Appendix E.

E. Supervisors will be considerate in granting annual leave for personal, religious, and emergency purposes. Employees are expected to request such leave in advance except in cases of emergency.

Section 3. Sick Leave.

A. Employees normally shall not be required to furnish medical certificates to substantiate requests for approval of sick leave, unless such sick leave exceeds three (3) days of continuous duration.

B. An employee's own certification as to reasons for absence on account of illness will normally be acceptable for absence of three (3) consecutive workdays or less. An employee may be required to submit a medical certificate for absences of three (3) workdays or less, if his/her supervisor has reason to believe that the employee is improperly using sick leave. His/her supervisor will inform the employee in writing of the reasons for requesting such a certificate.

C. The supervisor, if he/she determines that an employee must submit a medical certificate for all absences on sick leave, will advise the employee in writing that all future requests for sick leave must be supported by an acceptable medical certificate. At the end of six (6) months from the date of official notice requiring such medical certificate, his/her supervisor shall review such cases for the purpose of determining whether such requirement can be eliminated. If he/she determines that the restriction is no longer necessary, he/she shall notify the employee in writing and the previous notice shall be removed from the records.

D. Employees who, because of illness, are released from duty on advice of the appropriate health unit, shall not be required to furnish a medical certificate to substantiate sick leave, unless the absence is for more than three (3) consecutive workdays, or the employee is under the restrictions covered in paragraphs B. and C. above.

Section 4. Court Leave. Consistent with applicable rules and regulations, employees will be authorized absence from work status without charge to leave or loss of pay for jury duty or for attending judicial proceedings in a non-official capacity as a witness on behalf of the United States, the District of Columbia, a State or local government.

Section 5. Maternity Leave. Employees requesting maternity leave may choose how and in what order such approved absence will be recorded: sick leave, annual leave, or leave without pay. Any approved absence in excess of available annual leave and sick leave will be recorded as leave without pay. While the need for a woman to be absent on maternity leave is normally a matter between the employee and her doctor, any leave is subject to the approval of the supervisor.

Section 6. Excused Absence. Infrequent tardiness not in excess of one (1) hour may, in the judgment of the supervisor, be excused if the reasons given are acceptable. If the decision is made to charge the tardiness to annual leave and the actual period of absence is less than one (1) hour, the employee shall not be required to work the additional period covered by the leave charge.

Section 7. Hazardous Weather Dismissal Policy. When employees are dismissed from work under the Federal Government's Hazardous Weather Dismissal Policy, the Agency will make every effort during working hours to notify affected employees .

Section 8. Leave Approval. The Agency will assure that, except in emergency situations, someone shall be authorized to act promptly on employee requests for leave.

Section 9. Leave Records. Individual leave records are personal in nature. The Agency will not publicize such records by posting or distribution unless authorized by law or regulation.

ARTICLE 20

OFFICIAL TRAVEL

Section 1. To the maximum extent practicable, the Agency will schedule the time to be spent by an employee in official travel status within the employee's regularly scheduled workweek. Eligibility for overtime or compensatory time in connection with official travel will be determined in accordance with the provisions of AID Handbook 26, Chapter 8.

Section 2. To the maximum extent practicable, the employee shall be given notice of ten workdays prior to the date of departure for temporary duty, as provided in Handbook 22, Chapter 7.

Section 3. No employee will be required to travel without receiving in advance a signed travel authorization and a travel advance, in accordance with Agency regulations.

ARTICLE 21

PARKING AND TRANSPORTATION

Section 1. The Agency will confer with the Union on shuttle bus schedules among the Agency's buildings prior to changing established schedules.

Section 2. The Agency agrees that the availability of adequate public transportation and/or parking facilities sufficient to the needs of employees will be considered in reaching decisions to relocate its office facilities.

Section 3. The Agency agrees to assign parking spaces in accordance with Handbook 20, Chapter 5.

ARTICLE 22

HEALTH, SAFETY AND WELFARE

Section 1. The Agency will make reasonable efforts to provide and maintain safe, secure, and healthful conditions of employment; to comply with the standards of appropriate authorities; to take corrective action against hazards which are detected; and to instruct and train employees who are called on to work on jobs or machines which are hazardous and with which they are unfamiliar.

Section 2. The Agency will continue to support, within budgetary limitations, the level of medical services available at the several Health Units utilized by the Agency. These services include inoculations, emergency treatment, examinations of employees who travel overseas, bed rest, and consultation with available medical personnel.

Section 3. Both Parties agree to cooperate in sponsoring voluntary smoking cessation programs and to cooperate in Federal programs designed to assist employees suffering from alcohol, drug abuse, and emotional instability, and to maintain appropriate confidentiality in respect to individual employees thus afflicted.

Section 4. In the event that the Agency from time to time establishes committees to study matters of employee welfare, the Agency will request the Union to nominate a member to such committees. Should the Union not supply such nomination within ten (10) working days following receipt of the request, the Agency may proceed to fill that vacancy without further discussion with the Union.

Section 5. The Agency agrees to establish an Occupational Safety and Health Advisory Committee in accordance with E.O. 12196, Occupational Safety and Health Programs for Federal Employees. The Committee will be established within 60 days of the effective date of this Agreement and will include representatives selected by AFGE.

ARTICLE 23

CONTRACTING FOR SERVICES OUTSIDE THE AGENCY

Section 1. This Article covers contracting by the Agency for individual or group expertise such as consultants, IPA, RSSA, PASA, and services under purchase order agreements.

Section 2. The Union recognizes the right of the Agency to contract for services providing that the Agency shall adhere to all of the applicable rules and regulations relating thereto.

Section 3. The Agency will provide to the Union reasonable advance notice of its intent to contract for services which may appear to adversely affect employees in the Unit. The Agency will provide to the Union the numbers, types, and grades of affected positions. When available, the Agency will provide comparative costs of these services.

Section 4. The Agency will provide to the Union a listing of all service contracts. Upon request, the Agency will provide the Union with a copy of any such contract.

Section 5. No contractor shall be given a supervisory role with the Agency.

ARTICLE 24

EQUAL OPPORTUNITY

Section 1. The Agency acknowledges that the Union has a role in the development and review of the Agency's Affirmative Action Programs.

Section 2. While recognizing that the statutory and regulatory requirements and remedies for these programs remain unaltered by this Agreement (see P.L. 92-261, Title VII, and E.O. 11478 as amended), the Parties agree to the following participation by the Union:

A. The Union will have the opportunity to contribute to the formulation of the Affirmative Action Plan (AAP);

B. The Union will have the opportunity to review and comment upon the final draft of the AAP;

C. Such committees as might be established by the Agency to advise on Equal Employment Opportunity (EEO) programs will include Union representation reflecting, to the extent practical, the size of the Unit relative to the total Agency workforce. The Union will be invited to participate in the design of, and in substantive changes to, EEO programs; and

D. The Union will be invited to nominate a number of candidates for appointment as Equal Employment Opportunity counselors reflecting, to the extent possible, the size of the Unit relative to the total Agency workforce. The Director, Equal Opportunity Programs, may at his/her own discretion request that additional nominations be submitted by the Union.

Section 3. It is agreed that the Union may request, and the Agency will provide, readily available information about EEO programs including statistical data and the status of implementation of the AAP.

Section 4. It is agreed that the Agency will give consideration to the Union's comments in this important area, even though the collective bargaining aspects of Equal Opportunity are confined to those delineated in this Article.

Section 5. Employees who have an informal discrimination complaint under this Article may within 20 working days of the alleged violation, or the date the employee became aware of the violation, meet with an EEO Counselor in an attempt to resolve the complaint. If resolution is not reached within 20 working days after meeting with the Counselor, the employee may file a statutory complaint or grievance under Article 31 of this Agreement.

ARTICLE 25

OVERTIME

Section 1.

A. Overtime will be administered in a fair and equitable manner.

B. Overtime Pay Entitlement Solely Under Title 5, United States Code

Employees whose basic salaries are at or below the rate for GS-10/10 have a legal right to receive overtime pay, although they may specifically request compensatory time off. If an employee does not request compensatory time off this will not affect his opportunity to work overtime. Employees whose basic salaries exceed the rate for GS-10/10 may be required by the Agency to accept compensatory time off.

C. Overtime Pay Entitlement Solely Under the Fair Labor Standards Act (FLSA)

Employees must be paid for overtime work. No compensatory time off is allowed under FLSA.

D. Overtime Pay Entitlement Under Both FLSA and Title 5

1. If overtime pay entitlement is greater under FLSA, the employee must be paid.

2. If overtime pay entitlement is equal or greater under Title 5, compensatory time may be granted upon employee's request instead of overtime pay.

E. The fact that an employee does not volunteer to perform uncompensated overtime shall not be taken into consideration in the evaluation of his performance or in his opportunities for advancement.

F. The use of approved annual leave or sick leave during the basic workweek will not affect an employee's opportunity to work overtime.

Section 2. Taxi travel between home and office may be authorized or approved by appropriate officials at the employee's request when such travel is the result of officially ordered overtime during hours of darkness or infrequently scheduled public transportation.

ARTICLE 26

WITHIN-GRADE PAY INCREASES

Section 1. Within-grade pay increases are granted in accordance with applicable law and regulations, which provide that, among other conditions, the employee's supervisor determines that the employee's work is of an "acceptable level of competence".

Section 2. If the employee's performance is not at an acceptable level of competence, and his/her within-grade is going to be withheld, the employee will be notified 60 days prior to the end of the waiting period. The notice will include the aspects of the employee's performance found unacceptable and the measures that will be taken to help the employee improve performance. The employee will also be advised that if an acceptable level of competence is not reached by the end of the waiting period, the employee's within-grade pay increase will be withheld.

Section 3. The decision on granting or withholding a within-grade pay increases must be supported by the employee's most recent PER. If the decision is not supported by the PER, a statement setting forth the reasons for granting or withholding the within-grade will be included with the acceptable level of competence determination.

Section 4. If the employee's performance is not at an acceptable level of competence, the negative determination shall include:

A. the reasons for the negative determination;

B. the aspects in which the employee must improve his/her performance in order to be granted a within-grade; and

C. the right to request a reconsideration from the designated reconsideration official.

Section 5. The employee may request reconsideration within 15 calendar days of receipt of the notice.

Section 6. The employee may request a meeting with the reconsideration official, and may be accompanied by a Union Representative.

Section 7. A reconsideration file including all pertinent documents shall be established.

Section 8. Within 21 calendar days of the receipt of the employee's written or oral presentation, the reconsideration official shall issue a notice of decision to the employee.

Section 9. An employee may file a grievance in accordance with Article 31.

ARTICLE 27

PAYMENT OF EARNINGS

In the event that an employee does not receive the correct amount due on the regular payday, the Agency will issue a substitute or supplementary check as soon as practicable, and may provide to such employee at his/her request emergency funds in an amount not to exceed his/her pay or $250.00, whichever is less.

ARTICLE 28

DISCIPLINARY ACTIONS

Section 1. A disciplinary action for purposes of this Article is defined as an oral admonition, an official reprimand, or a suspension for 14 calendar days or less. Disciplinary actions will be undertaken only for just cause and such cause as will promote the efficiency of the Agency. An employee, at his/her request, may be accompanied by a Union representative at any step in the procedure as set forth in this Article.

Section 2. The Parties agree that primary emphasis will be placed on alleviating situations which may result in disciplinary action. Supervisors will counsel and discuss any issue or problem with employees that might lead to disciplinary action and attempt to resolve the issue(s) short of such action.

Section 3. The Agency will not require or request, or attempt to require or request, an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of the Union representative, if he/she so requests.

Section 4. In disciplinary action cases, a copy of the charges and specifications made against an employee will be furnished to him/her either by registered mail or personal delivery not less than 30 calendar days prior to the effective date of any proposed disciplinary action.

Section 5. Any material used as a basis for these charges shall be made available to the employee and/or his/her representative.

Section 6. An employee may question an oral admonition or a notice of proposed action by his/her supervisor or management official.

Section 7. The employee may respond orally or in writing within 7 working days of receipt of the proposed action. Extensions of time may be granted if requested by the employee or his/her representative. A management official in the discussion of a proposed disciplinary action will explain to the employee, and/or the Union representative, the circumstances and basis for the proposed action, and carefully consider the employee's response and other relevant comments, before any further steps are taken.

Section 8. When an employee does not elect to have the Union represent him/her, the Union may have an observer present. A copy of all proposed disciplinary actions and decisions on them will be furnished to the Union upon written authorization from the employee concerned.

Section 9. The Agency shall issue a final written decision as soon as practicable stating the specific reasons for the action being taken including a statement of the employee's right to grieve as provided in Article 31.

ARTICLE 29

ADVERSE ACTIONS

Section 1. An adverse action for purposes of this Article is defined as a suspension of 15 calendar days or more, a reduction in grade or pay, a furlough of 30 calendar days or less, or removal. An employee, at his/her request, may be accompanied by a union representative at any step in the procedure as set forth in this article.

Section 2. An adverse action does not include the reduction in grade of a supervisor or manager prior to successful completion of the required probationary period if the reduction is to the grade held immediately before becoming a supervisor or manager.

Section 3. The Parties agree that primary emphasis will be placed on alleviating situations which may result in adverse action. Supervisors will counsel and discuss any issue or problem with employees that might lead to adverse action and attempt to resolve the issue(s) short of such action.

Section 4. The Agency will not require or request, or attempt to require or request, an employee who is under investigation for misconduct to submit to interrogation which could lead to adverse action without the presence of the Union representative, if he/she so requests.

Section 5. In adverse action cases, a copy of the charges and specifications made against an employee will be furnished to him/her either by registered mail or personal delivery not less than 30 calendar days prior to the effective day of any proposed adverse action.

Section 6. Any material used as a basis for these charges shall be made available to the employee and/or his/her representative.

Section 7. The employee may respond orally or in writing within 10 working days of receipt of the proposed action. Extensions of time may be granted if requested by the employee or his/her representative. A management official in the discussion of a proposed adverse action will explain to the employee, and/or the Union representative, the circumstances and basis for the proposed action, and carefully consider the employee's response and other relevant comments, before any further steps are taken.

Section 8. When an employee does not elect to have the Union represent him/her, the Union may have an observer present. A copy of all proposed adverse actions and decisions on them will be furnished to the Union upon written authorization from the employees concerned.

Section 9. The Agency shall issue a final written decision as soon as practicable stating the specific reasons for the action being taken including a statement of the employee's right to grieve or appeal as provided in Article 31.

ARTICLE 30

ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

Section 1. For purposes of this Article, unacceptable performance is defined as performance which fails to meet established performance standards in one or more critical elements of an employee's assigned position. An employee, at his/her request may be accompanied by a Union representative at any step in the procedure as set forth in this Article.

Section 2. The Parties agree that primary emphasis will be placed on alleviating situations which may result in disciplinary action. Supervisors will counsel and discuss any issue or problem with employees that might lead to disicplinary action and attempt to resolve the issue(s) short of such action.

Section 3. In unacceptable performance cases, the employee against whom removal or reduction in grade is proposed will be given 30 calendar days advance written notice of the proposed action. The notice will be furnished to the employee either by registered mail or personal delivery. The advance written notice will include:

A. Specific instances of unacceptable performance by the employee; and

B. The critical elements of the employee's position involved in each instance of unacceptable performance.

Section 4. Any material used as a basis for these charges shall be made available to the employee and/or his/her representative.

Section 5. The employee may respond orally or in writing within 10 working days of receipt of the proposed action. Extension of time may be granted if requested by the employee or his/her representative. A management official in the discussion of a proposed action based on unacceptable performance will explain to the employee, and/or the Union representative, the circumstances and basis for the proposed action, and carefully consider the employee's response and other relevant comments, before any further steps are taken.

Section 6. When an employee does not elect to have the Union represent him/her, the Union may have an observer present. A copy of all proposed actions based on unacceptable performance and decisions on them will be furnished to the Union upon written authorization from the employee concerned.

Section 7. The Agency shall issue a final written decision within 30 days after the date of expiration of the notice period. The decision to remove or reduce in grade may be based only on those instances of unacceptable performance which occurred in the year prior to the date of the advance notice. The decision will include a statement of the employee's right to grieve or appeal as provided in Article 31.

ARTICLE 31

GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances. It shall be the exclusive procedure available to employees in the bargaining unit for resolving such grievances.

Section 2. Scope

A. A grievance means any complaint by any employee in the bargaining unit, the union, or the employer concerning:

1. The effect or interpretation, or a claim of breach, of this collective bargaining agreement; or

2. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment that is within the authority of the Agency to correct.

B. Except that it shall not include a grievance concerning:

1. Any claimed violation relating to prohibited political activities; or

2. Retirement, life insurance, or health insurance; or

3. A suspension or removal for National Security reasons, Section 7532 of Title V; or

4. Any examination, certification or appointment relating to initial employment; or

5. The classification of any position which does not result in the reduction in grade or pay of any employee.

C. An aggrieved employee affected by any of the following may raise the matter under a statutory procedure or this procedure but not both:

5 USC 2302(b)(1)	Prohibited Personnel Practice
5 USC 7702	Discrimination
5 USC 4303	Unacceptable Performance
5 USC 7512	Adverse Action

An employee shall be deemed to have exercised his/her option under this provision when the employee timely files a notice of appeal under the statutory procedure or timely files a grievance in writing under this procedure whichever occurs first.

Section 3. An employee or group of employees may present grievances without the intervention of the Union, on their own behalf, provided the Union is given the opportunity to be present during the processing of the grievance and at any formal discussion concerning the grievance and at the adjustment of the grievance. The Union shall promptly receive copies of written decisions on grievances within the time frame contained herein.

Section 4. Many grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The employer and the Union agree that every effort will be made by management and the aggrieved party(s) to settle grievances at the lowest possible level. Because dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, or loyalty or desirability to the organization.

Section 5. Written material pertaining to individual employee grievances will be kept in separate files. Access will be limited in accordance with applicable laws.

Section 6. An employee grievance is a complaint by an employee seeking relief personal to the employee. Employee grievances shall be processed as follows:

A. Step 1. An employee or the Union steward shall within twenty (20) working days of the alleged violation, or from the date the employee became aware of the violation present the grievance informally to the immediate supervisor or responsible official. The term "responsible official" as used herein includes any appropriate official at the lowest chain of command who has the authority to grant the relief requested. A Union representative may at the employee's request be present at all discussions relating to the grievance. If the grievance is not satisfactorily settled informally within ten (10) working days, the grievant or the steward will reduce the grievance to writing for a written response by the supervisor/responsible official. Within ten (10) working days of receipt of the written grievance,

the employee and the steward will be advised in writing by the supervisor/responsible official of his/her decision. The notification will include the name and title of the Agency official to whom the employee may address a second step grievance.

Grievances concerning merit promotion actions will be initiated at Step 2 of this procedure.

Step 2. Within ten (10) working days of receipt of the Step 1 decision, the grievant may file a formal grievance in writing to the next-level supervisor or responsible official. This submission will include a plain statement of the alleged violation and the relief requested. Within ten (10) working days thereafter, the Agency representative will provide to the employee a written decision.

Grievances concerning the Merit Promotion Plan or Article 13 of this Agreement will be presented to the Agency's Merit Staffing Office which must give its reply in writing within ten (10) working days.

Step 3. If the grievance is not settled at the previous step, the grievant and/or the Union may within ten (10) working days after receipt of the written response submit the grievance to the Chief, Labor Relations Staff. This submission will include the written material exchanged at the previous steps. The Chief, Labor Relations Staff or his/her designee will review the record of the case, investigate as he/she sees fit, meet with the aggrieved employee and/or his/her Union representative, if any, and give the employee a written decision within fifteen (15) working days after receipt.

B. Union representation at the second and third steps of the grievance procedure shall be by the Chief Steward or his/her designated representative. The Chief Steward may designate any one of the twenty stewards or an elected officer of the Union. In addition, the Union may call upon the district or National Office of the Union for a representative to be present and assist the grievant at a grievance presentation.

Section 7.

A. Union grievances will be submitted to the Agency at the Third Step (to the Chief, Labor Relations Staff) within twenty (20) working days of the violation or from the date the Union became aware of the alleged violation. A grievance on a continuing condition may be filed at any time during the existence of that condition.

B. In any charge by the Union that the Agency violated Title VII of the Civil Service Reform Act, the Union may submit the matter for consideration under this negotiated grievance procedure or as an unfair labor practice, but not both.

C. Grievances by the Agency will be submitted to the Union directly at the Third Step (to the President of the Union) within twenty (20) working days of the violation or from the date that the Agency became aware of the alleged violation, or any time as long as a continuing condition exists.

Section 8. Within twenty (20) working days after the Agency or Union has issued its Step 3 written response, either Party may request in writing the arbitration services of the Federal Mediation and Conciliation Service. A copy of the request shall be sent to the other Party. If an unresolved grievance is not referred for arbitration within this time limit, it shall be deemed satisfied or denied. Arbitration can be invoked only by the Parties to this Agreement.

Section 9. Questions of grievability and/or arbitrability shall be served upon the other Party as soon as possible, but in no case later than 20 working days after arbitration has been invoked. Unresolved questions of grievability and/or arbitrability shall be presented to the arbitrator as the threshold step of the arbitration and the arbitrator shall render a decision on the threshold issue before hearing the merits.

Section 10. If for any reason the Agency or the Union refuse to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service is empowered to make a direct designation of an arbitrator to hear the case.

Section 11. All time limits in this Article may be extended by mutual consent of the Parties. Failure of the Agency/Union to observe the time limits at any Step shall entitle the employee or the Union/Agency to proceed to the next Step. Failure of the employee, Agency, or Union to proceed to the next Step within the established time limits will constitute resolution of the grievance on the basis of the Agency's/ Union's last proposal.

Section 12. While both Parties will make every effort to settle grievances in less than the time limits specified by this Article, it is recognized that because of the interrelation of the Agency's domestic and overseas operation there may be occasions when both Parties may need to obtain documents, statements, or information from sources other than AID/W or when principals to the grievance may be temporarily unavailable.

Section 13. The Federal Mediation and Conciliation Service shall provide the Parties with a seven (7) person panel of impartial qualified arbitrators. The Parties will meet within five (5) working days after receipt of such list. If they cannot mutually agree upon one (1) of the listed arbitrators, the Parties alternately each strike one (1) arbitrator's name from the list of seven (7). The remaining person will be the duly selected arbitrator. Whether the Agency or the Union strikes the first name will be determined by the flip of a coin.

Section 14. While recognizing that the timing of an arbitration will depend in part upon the schedule of the arbitrator, it is the Parties' intention to dispose of grievances promptly. If a Party desires to submit a brief, the submission date thereof shall be set by the arbitrator based on the needs of the Parties and the reasonable length of the grievance litigation.

Section 15. The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.

Section 16. The arbitration award will be binding on the Parties. However, either Party may file exception to an award with the Federal Labor Relations Authority as prescribed in Section 7122 of 5 USC.

Section 17. All costs of the arbitrator, including fees and expenses shall be divided equally by the Parties. Either Party may request that a verbatim transcript of the proceedings be made and shall be liable for the cost of such transcript. If after originally declaring it does not wish a transcript either Party later determines it requires a copy, it will become liable for the costs of said transcript as though it had joined in the initial request. All other costs caused by either Party shall be borne by that Party alone.

This Agreement between AID and AFGE will remain in full force and effect until June 15, 1983, subject to the conditions set forth in Article 2 of this Agreement. The Parties further agree that this Agreement shall become effective June 15, 1981.

FOR THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES:

National President, AFGE, AFL-CIO

Member, AFGE Bargaining Team
President, AFGE Local 1534

Chief Negotiator, 2nd Vice President, AID, AFGE Local 1534

Member, AFGE Bargaining Team
Vice President, AFGE Local 1534

Member, AFGE Bargaining Team
1st Vice President, AID, AFGE Local 1534

Member, AFGE Bargaining Team
Treasurer, AFGE Local 1534

Member, AFGE Bargaining Team
Labor Relations Specialist
National AFGE, AFL-CIO

FOR THE AGENCY FOR INTERNATIONAL DEVELOPMENT:

Deputy Administrator

Director, Office of Personnel Management

Chief, Labor Relations Staff

Chief Negotiator

Member, AID Bargaining Team

Member, AID Bargaining Team

Member, AID Bargaining Team

Member, AID Bargaining Team

DATE: 15 JUN 1981

ATTACHMENT 4C

CHAPTER 10—LABOR-MANAGEMENT RELATIONS

22 USC 4101.

SEC. 1001. LABOR-MANAGEMENT POLICY.—The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this

chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

SEC. 1002. DEFINITIONS.—As used in this chapter, the term— 22 USC 4102.

(1) "Authority" means the Federal Labor Relations Authority, described in section 7104(a) of title 5, United States Code;

(2) "Board" means the Foreign Service Labor Relations Board, established by section 1006(a);

(3) "collective bargaining" means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining under the provisions of this chapter;

(5) "conditions of employment" means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

(A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5, United States Code; 5 USC 7331.

(B) relating to the designation or classification of any position under section 501; *Ante*, p. 2092.

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multiagency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) "dues" means dues, fees, and assessments;

(8) "employee" means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, or any individual who participates in a strike in violation of section 7311 of title 5, United States Code; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 1015 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) "exclusive representative" means any labor organization which is certified as the exclusive representative of employees under section 1011;

(10) "General Counsel" means the General Counsel of the Authority;

(11) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 1101) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) "management official" means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 209; or

Ante, p. 2080.

(F) is engaged in the administration of this chapter or in the formulation of the personnel policies and programs of the Department;

(13) "Panel" means the Foreign Service Impasse Disputes Panel, established by section 1010(a); and

(14) "person" means an individual, a labor organization, or an agency to which this chapter applies.

22 USC 4103.

SEC. 1003. APPLICATION.—(a) This chapter applies only with respect to the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) The President may by Executive order exclude any subdivision of the Department from coverage under this chapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) The President may by Executive order suspend any provision of this chapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

22 USC 4104.

SEC. 1004. EMPLOYEE RIGHTS.—(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any

such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

SEC. 1005. MANAGEMENT RIGHTS.—(a) Subject to subsection (b), nothing in this chapter shall affect the authority of any management official of the Department, in accordance with applicable law— 22 USC 4105.

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 605(b); *Ante*, p. 2096.

(3) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(4) to fill positions from any appropriate source;

(5) to determine the need for uniform personnel policies and procedures between or among the agencies to which this chapter applies; and

(6) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

SEC. 1006. FOREIGN SERVICE LABOR RELATIONS BOARD.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this chapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs. 22 USC 4106.

(b) The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board

other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day they are performing their duties (including traveltime).

(e) The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

22 USC 4107.

SEC. 1007. FUNCTIONS OF THE BOARD.—(a) The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this chapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 1014; and

(5) take any action considered necessary to administer effectively the provisions of this chapter.

(b) Decisions of the Board under this chapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, United States Code, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this chapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5, United States Code.

5 USC 7101 *et seq.*

(c) In order to carry out its functions under this chapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this chapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this chapter;

(B) conduct appropriate inquiries wherever persons subject to this chapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas;

(E) require the Department or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action the Board considers appropriate to carry out this chapter; and

(F) consistent with the provisions of this chapter, exercise the functions the Authority has under chapter 71 of title 5,

United States Code, to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

5 USC 7101 *et seq.*

SEC. 1008. FUNCTIONS OF THE GENERAL COUNSEL.—The General Counsel may—

22 USC 4108.

(1) investigate alleged unfair labor practices under this chapter,

(2) file and prosecute complaints under this chapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

SEC. 1009. JUDICIAL REVIEW AND ENFORCEMENT.—(a) Except as provided in section 1014(d), any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

22 USC 4109.

(b) The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this chapter and for any appropriate temporary relief or restraining order.

Petition.

(c) Subsection (c) of section 7123 of title 5, United States Code, shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5, United States Code.

5 USC 7101 *et seq.*

(d) The Board may, upon issuance of a complaint as provided in section 1016 charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

Unfair labor practice, relief petition.

SEC. 1010. FOREIGN SERVICE IMPASSE DISPUTES PANEL.—(a) There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this chapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

22 USC 4110.

(1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);

(2) one individual employed by the Department of Labor;

(3) one member of the Federal Service Impasses Panel; and

(4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Panel members referred to in subsection (a) (3) and (4) shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, except that the member who is also a

Compensation.

45 FR 69201.

member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4) of title 5, United States Code. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5, United States Code.

Travel expenses.

Impasse investigation and settlement.

(c)(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

(A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or

(B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

(A) hold hearings;

(B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpenas as provided in section 7132 of title 5, United States Code; and

(C) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

Labor organization. 22 USC 4111.

SEC. 1011. EXCLUSIVE RECOGNITION.—(a) The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved; may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

(d)(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose— Regulations.

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

SEC. 1012. EMPLOYEES REPRESENTED.—The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded— 22 USC 4112.

(1) employees engaged in personnel work in other than a purely clerical capacity; and

(2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

SEC. 1013. REPRESENTATION RIGHTS AND DUTIES.—(a) A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 1012. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership. 22 USC 4113.

(b)(1) An exclusive representative shall be given the opportunity to be represented at—

79-139 O - 80 - 5 (297)

(A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 1101) or any personnel policy or practice or other general condition of employment; and

(B) any examination of an employee by a Department representative in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 1010, to assist in any negotiation.

(d) The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance proceeding under chapter 11; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

Agreement approval.

(f)(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) The Department shall consult with the exclusive representative with respect to Government-wide or multiagency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

SEC. 1014. RESOLUTION OF IMPLEMENTATION DISPUTES.—(a) Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall— 22 USC 4114.

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled. Appeal.

(b) Either party to an appeal under subsection (a)(3) may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient— Exception, filing.

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) If no exception to a Foreign Service Grievance Board action is filed under subsection (b) within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Resolutions of disputes under this section shall not be subject to judicial review.

SEC. 1015. UNFAIR LABOR PRACTICES.—(a) It shall be an unfair labor practice for the Department— 22 USC 4115.

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5, United States Code) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;

(4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); or

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this chapter; or

(9) to fail or refuse otherwise to comply with any provision of this chapter.

(c) The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this chapter, or

(B) constitute grounds for the setting aside of any election conducted under this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 1109(b), an employee has an option of using the grievance procedure under chapter 11 or an appeals procedure, issues which can be raised under section 1014 or chapter 11 may, in the discretion of the aggrieved party, be raised either under such section or chapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 1014 or chapter 11.

Post, p. 2142.

SEC. 1016. PREVENTION OF UNFAIR LABOR PRACTICES.—(a) If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

Investigation.
22 USC 4116.

(b) Any complaint under subsection (a) shall contain a notice—

Complaint.

(1) of the charge;

(2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and

(3) of the time and place fixed for the hearing.

(c) The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d)(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a

Hearing.

5 USC 551.

79-139 O - 80 - 6 (297)

court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5, United States Code; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this chapter.

Back pay.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5, United States Code) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

22 USC 4117.

SEC. 1017. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS.—(a) The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b), an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a); or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

Reports.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

Regulations.

(d) The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.

Strike, work stoppage or slowdown.

(f) If the Board finds that any labor organization has willfully and intentionally violated section 1015(b)(7) by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

22 USC 4118.

SEC. 1018. ADMINISTRATIVE PROVISIONS.—(a) If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b), any such assignment may not be revoked for a period of one year from its execution.

(b) An assignment for deduction of dues shall terminate when—

(1) the labor organization ceases to be the exclusive representative;

(2) the individual ceases to receive a salary from the Department as a member of the Service; or

(3) the individual is suspended or expelled from membership in the exclusive representative.

(c) During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 1011(b)(1)(A) alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

Official time, usage.

(d) The following provisions shall apply to the use of official time:

(1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals designated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this chapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

CHAPTER 5

THE AID EQUAL OPPORTUNITY PROGRAM

5A. Purpose

1. General

This Chapter sets forth the policies and regulations under which AID conducts a continuing affirmative program for equal opportunity in employment and personnel management. It also delineates AID's authority, responsibilities, and procedures governing complaints of discrimination in employment based on race, color, religion, national origin, physical or mental handicap, sex, or age.

2. Policy

a. It is AID's policy to provide equal opportunity in employment for all persons; to prohibit discrimination because of race, color, religion, national origin, physical or mental handicap, sex, or age; and to promote the full realization of equal employment opportunity through a continuing affirmative action program in the Agency.

b. It is also AID's policy to ensure that all persons to whom this Chapter applies are free from any and all restraint, interference, coercion, discrimination, and reprisal in their opposition to any practices made unlawful by the regulatory statutes referenced in paragraph 5D below, and in their participation in any stage of the processing of a complaint, including the counseling stage and thereafter.

5B. Scope

The provisions of this Chapter apply to all U.S. citizen direct-hire employees of AID and any U.S. citizen who is an applicant for employment with AID.

5C. Definitions

For the purpose of these procedures the term:

1. Employee includes all AID U.S. citizen direct-hire personnel and personal service contractors.

2. Applicant for employment includes individuals who apply for available positions in AID.

3. DEEO means the Director of Equal Employment Opportunity. The Director, Office of Equal Opportunity Programs (EOP) is designated as the DEEO.

5C

4. EEOO means the Equal Employment Opportunity Officer.

5. EEO Counselor means the Equal Employment Opportunity Counselor.

6. Aggrieved person means any person or organization presenting a potential complaint to an EEO Counselor.

7. Complainant means any individual or organization that files an equal employment opportunity complaint with AID.

8. EEOC and The Commission mean the Equal Employment Opportunity Commission.

9. Age refers to individuals who are at least forty years old.

10. Complaints Examiner means a person appointed by EEOC to conduct hearings on equal employment opportunity complaints.

5D. Authorities

1. Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16, et seq.

2. Executive Order 11478, 34 FR 12985, August 10, 1969 Non-Discrimination in the Federal Government.

3. Section 6(d) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 206(d), Equal Pay Act of 1963, which prohibits sex-based difference where work performed is of equal skill, effort and responsibility.

4. Section 633a of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, et seq., which prohibits job discrimination in Federal employment against workers at least 40 years of age.

5. Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701, et seq., which pertains to employment discrimination against handicapped persons in the Federal Government.

6. Section 403 of the Veterans Readjustment Act of 1974, 38 U.S.C. 2012, et seq., which requires affirmative action in the employment and advancement of disabled and Vietnam era veterans.

7. Reorganization Plan No. 1 of 1978, 5 U.S.C. 901, et seq., and Executive Order 12067 -- Coordination of Federal Equal Employment Opportunity.

8. Equal Employment Opportunity in the Federal Government, 29 CFR 1613, et seq.

5E. Background

1. Executive Order 11478 and Title VII.

Requirements for Federal agency equal employment opportunity (EEO) and affirmative action programs were first established in 1969 by Executive Order (E.O.) 11478. In 1972 the Congress amended Title VII of the Civil Rights Act of 1964, thereby mandating Federal agencies to maintain affirmative action programs and to ensure enforcement of Federal EEO policy.

The enactment of this mandate was a consequence of the specific findings of pervasive discrimination in Federal employment evidenced by (a) serious underrepresentation and exclusion of minority group members and women in specific occupational areas, grade levels, agencies, and regions; and (b) systemic, institutional barriers operating through various Civil Service regulations and procedures, particularly nonjob related selection and promotion techniques.

2. Section 717 of the Civil Rights Act of 1964, as amended.

This section requires Federal agencies to undertake affirmative action.

3. Section 501 of the Rehabilitation Act of 1973, as amended, and Section 403 of the Veterans' Readjustment Assistance Act of 1974.

These statutes established requirements for each department, agency and instrumentality in the Executive Branch to submit annually to the EEOC an affirmative action plan for the hiring, placement and advancement of handicapped individuals including disabled veterans.

4. Reorganization Plan No. 1 of 1978 and Executive Order 12067.

These Presidential directives give EEOC lead coordinating responsibility for all Federal EEO activities.

5F. Responsibilities

All levels of Agency management share responsibility and are held responsible for the successful implementation of AID's equal opportunity program's goals and objectives. Supervisory and managerial performance is evaluated on these and other major Agency goals. Specific responsibilities for the various components of the program are set forth as follows:

1. The AID Administrator

a. Exercises personal leadership in the development, implementation, maintenance, and monitoring of AID's equal opportunity program.

5F1a

b. Designates a Director of Equal Employment Opportunity to assist in carrying out the functions described in this Chapter in all organizational units and locations of AID.

2. The Director of Equal Opportunity Programs

a. Advises the Administrator with respect to the development of plans, procedures, regulations, reports and other matters pertaining to AID's policies and programs established under this Chapter.

b. Evaluates the sufficiency of the total Agency EEO program and recommends to the Administrator improvements or corrections needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities under this Chapter.

c. Makes changes in programs and procedures designed to eliminate discriminatory practices and improve AID's EEO program.

d. Designates Equal Employment Opportunity Counselors.

e. Provides for counseling by an EEO Counselor of aggrieved employees or applicants for employment who believe they have been discriminated against and for attempting to resolve on an informal basis the matter(s) raised by them before a complaint of discrimination may be filed under Appendix 5A, section IV.

f. Exercises authority in processing complaints of discrimination in personnel matters within AID, subject to the regulations and procedures set forth in Appendixes 5A and 5B.

g. Designates Agency coordinators to ensure that equality of opportunity for women, Hispanic Americans and handicapped individuals, including disabled veterans is an integral part of AID's overall program.

h. Publicizes the EEO program through the procedures outlined in 5G below.

3. The Assistant Administrator for Management (AA/M)

The AA/M is the designated representative for AID management and, as such, is notified of all formal complaints of discrimination filed with AID. In this capacity, the AA/M is also authorized to enter into informal settlements of EEO complaints on behalf of AID.

5F

4. Bureau/Office Heads and Mission Directors

Bureau/Office Heads and Mission Directors share responsibility for assisting the DEEO in carrying out the EEO program within their organizational components. Towards this end, they must:

a. Maintain liaison with the DEEO on all EEO matters.

b. Assist the Office of Personnel Management (M/PM) in ensuring complete fairness in the selection, assignment, promotion, and training of personnel within their organizational units.

c. Provide guidance and assistance to all supervisory personnel within their respective organizations in carrying out their responsibilities in implementing AID's equal opportunity program.

d. Evaluate personnel practices within their respective organizational units to ensure continuing conformity to AID's equal opportunity program.

5. The Equal Employment Opportunity Manager

a. Serves as the Agency EEOO with primary responsibility for coordinating and monitoring the discrimination complaints process as outlined in Appendix 5A.

b. Conducts informal adjudication proceedings with complainants and/or their representatives with a view toward working out an informal resolution to the discriminatory allegations raised by them.

c. Is responsible for coordinating, directing, monitoring and evaluating the Agency's equal employment opportunity counseling practices.

6. Equal Employment Opportunity Counselors

Perform the functions listed in Appendix 5A, section III.C.

5G. The AID Equal Opportunity Program

To implement its policy of ensuring equality of opportunity for all persons, AID conducts a continuing campaign to eradicate every form of prejudice or discrimination from AID's personnel policies, practices and work environment and takes appropriate disciplinary action against employees who engage in discriminatoy practices. Specifically, the Agency:

1. Develops the plans, procedures, and regulations necessary to carry out the programs established under this Chapter.

5G

2. Provides orientation, training, and advice to managers and supervisors to ensure that they understand and are discharging their EEO responsibilities.

3. Ensures that recruitment activities reach all sources for candidates without regard to race, color, religion, national origin, sex, age, or handicap and solicits assistance on a continuing basis from groups representing such employees.

4. Utilizes to the fullest extent possible the current skills of each employee by such means as redesigning positions, where feasible, to ensure that the tasks assigned require the full utilization of those skills.

5. Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures.

6. Ensures participation at the local level with other employers, with schools and universities and with other public and private groups in cooperative efforts to improve employment opportunities and community conditions which affect employability.

7. Provides recognition through the Incentive Awards Program to employees, supervisors, managers and units demonstrating superior accomplishment in providing equal employment opportunity.

8. Provides for the counseling of employees and applicants who believe they have been discriminated against on the basis of race, color, religion, national origin, sex, age and/or handicap by AID and for informally resolving the matters raised by them.

9. Provides for the prompt, fair and impartial consideration and disposition of complaints involving issues of discrimination which cannot be informally resolved.

10. Establishes a system for periodically evaluating the effectiveness with which AID's EEO policy as stated in this Chapter is being carried out.

11. Submits for review and evaluation by the EEOC written annual affirmative action plans.

5H. Dissemination Of Information

A copy of this Chapter shall be made readily available by the Director, EOP, to all AID employees. Information concerning the AID's equal opportunity program shall also be disseminated periodically by the Director, EOP through the various Agency channels of communication, including:

5H

1. The names and addresses of the DEEO and the coordinators for the (a) Federal Women's Program (FWP), (b) Hispanic Employment Program, and (c) the Program for Handicapped Individuals, including Disabled Veterans.

2. The name and address of the EEOO.

3. The names and addresses of EEO Counselors and their availability to counsel employees or applicants for employment who believe they have been discriminated against.

4. The requirement that an employee or applicant for employment must consult an EEO Counselor concerning the alleged discriminatory action before a formal complaint may be filed. AID overseas personnel must consult an EEO Counselor or FWP Coordinator from the Department of State or the U.S. Information (USIA) Agency (USICA) serving their locality in the event that no AID personnel serve in those functions.

5. The requirement that a complainant must (a) consult an EEO Counselor within thirty calendar days following the action believed to be discriminatory or, if a personnel action, within thirty days of its effective date or notice thereof; and (b) file a written complaint within fifteen days following the final interview with the EEO Counselor.

APPENDIX - 5A

EMPLOYEE DISCRIMINATION COMPLAINT PROCESS

I. Purpose

This Appendix sets forth AID's regulations and procedures for the processing of complaints of discrimination filed with AID by individual employees or applicants for employment or any person intending to file a complaint on behalf of such individuals on the basis of race, color, religion, national origin, sex, physical or mental handicap or age. In addition, this Appendix sets forth the duties and responsibilities of AID personnel relating to the processing of discrimination complaints. (For Agency regulations and procedures governing the processing of Class Complaints of Discrimination and Complaints of Discrimination Based on Physical and/or Mental Handicap, see Appendixes 5B and 5C, respectively).

II. Nomination, Selection, Training and Evaluation of EEO Counselors

A. Nomination

During the month of July of each odd year, i.e., 83, 85, etc., the DEEO will issue an AID/W General Notice requesting volunteers to serve as EEO Counselors. Additionally, the DEEO will request in writing that the Executive Staff, AID/W, and each Ad Hoc group represented on the EEO oversight Board identify several qualified employees who would be willing to serve as EEO counselors. While the number of counselors may vary, EOP will generally seek twenty volunteers.

B. Selection

1. Based on a job analysis, the DEEO or designee will identify both critical and desirable elements for the function of EEO Counselor. These elements will be included in the General Notice, the memorandum to the Executive Staff, and the letter to the Ad Hoc groups.

2. Volunteers will be requested to complete a self crediting form. Selections will be based on an established rating plan. The personnel folders of all volunteers meeting the minimum qualifications will be reviewed by EOP. From this review, volunteers will be selected for interview. Interviews will be conducted by EOP staff members, who will then make recommendations for selection to the DEEO.

3. Counselors will serve for two-year terms which will begin on October 1.

II.

C. Training

EEO Counselors must complete a training program developed and administered by EOP before beginning to serve as EEO Counselors.

D. Evaluation

Job performance of EEO Counselors will be evaluated by the EEOO based on standard criteria developed by EOP. EEO Counselors may be decertified by the DEEO if they fail to meet the required standards.

III. Precomplaint Procedure

A. Representation

At this and all stages in the presentation of a complaint, the aggrieved person/complainant shall have the right to be accompanied, represented and advised by a representative or attorney of the complainant's choosing. The aggrieved person/complainant and representative, if employed by AID, shall have a reasonable amount of official time to prepare and present the complaint.

B. Consultation with EEO Counselor

Every aggrieved person must consult an EEO Counselor within thirty days of the alleged discriminatory action or, if a personnel action, within thirty days of the effective date of that action before filing a formal complaint. The individual may select any designated EEO Counselor within AID. An employee in an overseas location that does not have an AID EEO Counselor must consult a Counselor or FWP Coordinator designated by the Department of State or USIA. AID shall ensure that full cooperation is provided by all employees to EEO Counselors in the performance of their duties.

C. Responsibility of EEO Counselor

The Counselor shall:

1. Counsel the aggrieved individual concerning the individual's rights under this Appendix, the negotiated procedure and procedures applicable to appeals to the Merit Systems Protection Board (MSPB).

2. Contact the appropriate officials to attempt informal resolution of the matter but in no event, reveal the identity of the aggrieved party unless so authorized in writing by the aggrieved party or at such time after the aggrieved party has filed a formal complaint.

III.C

3. Maintain a record of counseling activities so as to periodically brief the EEOO on those activities.

4. Conduct the final interview with the aggrieved person no later than 21 calendar days after the date the aggrieved person contacted the Counselor unless a time extension is approved by the EEOO. In the final interview the Counselor shall advise the aggrieved person, both orally and in writing (notice of final interview), of (1) the right to file a formal complaint within fifteen calendar days after the final interview, and (2) the duty to ensure that AID will be immediately informed if counsel or any other representative is retained. The Counselor will not attempt in any way to restrain the aggrieved person from filing a complaint.

5. Shall submit a written report in accordance with procedures established in II.C above upon notification by the EEOO that a formal complaint has been filed.

IV. Filing and Presentation of a Formal Complaint of Discrimination

A. Time Limits

Formal complaints may be presented for processing only if the complainant consulted an EEO Counselor within thirty calendar days of the alleged discrimination or, if a personnel action, within thirty calendar days of the effective date of that action and the complainant or representative submitted a formal complaint to an appropriate official listed in IV.B2 below within fifteen calendar days of the final interview with the EEO Counselor. AID may extend the time limits allowed by this section if deemed appropriate.

B. Where to file

1. If the problem involves possible discrimination on the basis of race, color, religion, sex (including sexual harassment), national origin, physical or mental handicap or age, and has not been resolved by informal means with the assistance of the EEO Counselor, the complainant may file a a formal civil rights complaint.

2. A formal complaint of discrimination must be filed with the Administrator, the DEEO, the EEOO, the Hispanic Program Coordinator (HPC) or the FWP Manager. Complaints filed with persons other then the DEEO will be forwarded to the DEEO within two working days for all processing. The DEEO will notify the complainant of the receipt of the complaint within five working days.

3. Any complaint originating in the EOP Office shall be forwarded to the DEEO or other appropriate official in the event the complaint is filed against the DEEO, who shall assign the processing of the complaint to the Office of General Counsel or, where appropriate, secure the services of a cooperating Federal agency's EEOO.

IV.B

4. A complaint shall be deemed filed on the date it is received if delivered to an AID official listed in IV.B2 above or on the date postmarked if addressed to an AID official listed in IV.B2 above.

C. Presentment of Complaint

The complaint of discrimination shall be in writing and must be signed by the complainant. It may be submitted on CSC FORM 894. The complaint shall state in detail the specific act(s) of alleged discrimination and shall include the name, address and telephone number of the complainant; the complainant's representative or attorney, if any; and the identification, the organizational unit and location of the person(s) charged with discrimination. It shall also include the reason(s) the complainant believes this practice constitutes discrimination on the basis of race, color, religion, national origin, sex, physical or mental handicap or age and the relief requested.

D. EEO Counselor's Report

The EEOO shall immediately notify the EEO Counselor that a formal complaint of discrimination has been received. Within five workdays of such notice, the EEO Counselor shall file with the EEOO a report (the substance of which will be in accordance with the AID Equal Employment Opportunity Counselor's Manual) including a copy of the complaint summarizing the actions during precomplaint procedures and advice to both the complainant and relevant AID officials concerning the merits of the matter. The EEOO shall, within five workdays of receipt of such EEO Counselor's report, notify the Agency representative in writing that a formal complaint and the EEO Counselor's report have been filed.

E. Acceptance, Rejection or Cancellation of Complaint

1. Acceptance

a. Within ten calendar days of AID's receipt of a complaint, the EEOO shall review the complaint and shall inform the complainant, in writing, of acceptance or rejection of the complaint or a portion thereof. The notice of acceptance or rejection shall inform the complainant of the rights afforded by the administrative process and by statute.

b. If the complainant is not counseled on an allegation within the scope of the complaint, the EEOO shall afford the complainant and the Counselor fifteen calendar days to complete the precomplaint counseling process on the omitted allegation.

VI.E1

c. If an allegation lacks specificity and detail, the EEOO shall afford the complainant an opportunity to provide the required information. The EEOO may reject the complaint if the complainant fails to provide such information within a specified time period. If the information provided contains new allegations outside the scope of the complaint, the EEOO must advise the complainant to see a Counselor on timely issues and reject the untimely issues.

2. Rejection

A rejection may be based on any of the following reasons:

a. The complaint, or a portion thereof, was not timely filed.

b. The complaint, or a portion thereof, consists of an allegation identical to an allegation contained in a previous complaint filed by the same complainant which is pending (see Mixed Cases, V.A below).

c. The complaint, or a portion thereof, does not contain allegations that an employee or applicant for employment was discriminated against because of race, color, religion, national origin, sex, age or handicap.

d. A Counselor was not consulted in a timely manner.

e. The complaint, or a portion thereof, lacks specificity and detail.

f. The complaint was not submitted in writing and/or was not signed by the complainant.

V. Relationship to Other Complaint Procedures

A. Mixed Cases

A mixed case involves an AID proposal or decision to take a personnel action which is appealable to the MSPB (see 5 CFR 1201 et seq.), and which includes an allegation of unlawful discrimination. In the event that an employee or applicant for employment is subjected to a personnel action which is appealable to MSPB, the individual may:

1. File a complaint of discrimination with AID pursuant to the procedures found in this Appendix. However, the complainant is not entitled to a hearing pursuant to section IX and referenced in section VIII.A2 of this Appendix but shall be notified that upon receipt of a Proposed Disposition pursuant to section VIII, a Final Agency Decision pursuant to section XI with the right of appeal to and hearing before MSPB may be requested; OR

V.A

2. File an appeal of the action alleging discrimination with MSPB either within twenty days after AID's final disposition or after 120 days after the effective date of the appealable action but no later than one year from the effective date of the appealable action; OR

3. File an appeal with MSPB within twenty days of the effective date of the appealable action in the event that the aggrieved person does not file a complaint of discrimination with AID.

It must be noted that an aggrieved person may file a mixed case complaint with AID pursuant to this Appendix OR file a mixed case appeal directly with MSPB, BUT NOT BOTH. An aggrieved person will be notified of this fact and that whichever is filed first shall be considered an election to proceed in that forum.

B. Complaints Pursuant to the Negotiated Grievance Procedures

An aggrieved person who has filed a grievance under AID's negotiated grievance procedure may not thereafter file a complaint based on the same matter pursuant to the provisions of this Appendix. As in V.A above, once a grievance has been filed pursuant to the negotiated procedures, the aggrieved person is deemed to have elected that procedure and is precluded from pursuing the same matter under these procedures.

VI. Investigation of a Complaint

A. Assignment of Investigator

The EEOO responsible for processing the complaint of discrimination shall prepare a Scope of Investigation within ten working days of acceptance of the complaint. An investigator shall be assigned within twenty working days of acceptance of the complaint.

B. Authority of Investigators

The DEEO shall provide each investigator with written authority to:

1. Investigate all aspects of complaints of discrimination;

2. Require all employees to cooperate with the investigator; and

3. Require employees having any knowledge of the matter to furnish testimony under oath or affirmation without a pledge of confidence.

C. Scope of Investigation

The relevant investigation shall be conducted in accordance with 29 CFR 1613.216 (Investigation).

VI.

D. Forwarding of Investigation File

The investigator shall forward the investigative file to the EEOO within sixty calendar days of receipt of the assignment. The EEOO shall furnish the complainant or representative a copy of the completed investigative file within five working days after EOP's acceptance of the investigative file.

VII. Adjustment of Complaint

The EEOO must provide an opportunity for settlement of the complaint on an informal basis within thirty days after the complainant has received the investigative file. The EEOO shall meet at least once with the complainant and the complainant's representative in an effort to achieve an informal resolution. Nothing in this Appendix should be construed as preventing an informal adjustment of the complaint at any time prior to the final Agency decision. An informal adjustment of a complaint of discrimination may include, but is not limited to, retroactive and prospective promotion, back pay, attorney fees (except when the allegation is based on age discrimination) and/or any other appropriate relief. Informal adjustments are appropriate without a formal finding of discrimination by AID. If an adjustment of the complaint is reached during this or any other stage of the complaint process, the terms of the adjustment shall be put in writing and signed by the EEOO, the complainant, the Agency representative and the appropriate administering official and made part of the complaint file. In the event AID fails to implement any term found in the settlement agreement, or rescinds such a term, for any reason not attributable to acts or conduct of the complainant, the complainant may enforce the terms of that agreement through any appropriate proceeding.

VIII. Proposed Agency Decision

A. If an adjustment of the complaint is not reached within 100 days of the filing of the formal complaint, the EEOO shall notify the complainant in writing of:

1. A proposed disposition of the complaint;

2. The right to a hearing and a decision by the DEEO if the complainant notifies AID, in writing within fifteen calendar days of receipt of notice, that a hearing is desired; and

3. The right to a decision by the DEEO, or the Administrator if the complaint involves the DEEO, without a hearing.

VIII.

B. If the complainant fails to notify AID within the period prescribed in VIII.A2 above of the complainant's wishes regarding a hearing and decision by the DEEO, the DEEO or designee may adopt the disposition of the complaint proposed in the notice sent to the complainant pursuant to VIII.A1 above as AID's Final Agency Decision. If the complainant has requested a decision without a hearing, the complaint along with the complaint file shall be forwarded to the DEEO for a decision. In either case, the DEEO or designee shall transmit the decision by letter to the complainant or representative advising the complainant of the right to appeal the decision to EEOC, the right to file a civil action in the U.S. District Court, and the applicable time limits.

IX. Hearing Procedure

If the complainant requests a hearing, the EEOO shall arrange for a formal hearing.

A. Complaints Examiner

The hearing shall be conducted by a complaints examiner from a Federal agency other than AID. The EEOO will request that EEOC designate an examiner certified by them to conduct a discrimination hearing.

B. Arrangements for Hearing

The EEOO shall transmit to the complaints examiner the complaint file containing all of the documents described in 29 CFR 1613.218 and 1613.222 (see Attachment 5A) which have been acquired up to that point in the processing of the complaint, including the original copy of the investigative file. The examiner shall review the file to determine if further investiation is needed before scheduling a hearing. When it is determined that further investigation is needed, the examiner shall remand the complaint to the EEOO for further investigation pursuant to 29 CFR 1613.216.

C. Conduct of Hearing

1. Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint.

2. The complaints examiner shall conduct the hearing so as to bring out pertinent facts. Rules of evidence shall not be applied strictly, but irrelevant or unduly repetitious evidence shall be excluded. Information having a bearing on, or employment policy or practices relevant to, the complaint shall be received in evidence. The complainant, the complainant's representative, and AID's representative shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

IX.

D. Powers of Complaints Examiner

Pursuant to 29 CFR 1613.218(d) the complaints examiner is authorized to:

1. Administer oaths or affirmations,

2. Regulate the course of the hearing,

3. Rule on offers of proof,

4. Limit the number of witnesses whose testimony would be unduly repetitious, and

5. Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

E. Witnesses at Hearing

The complaints examiner may request that AID make available as a witness at the hearing an employee requested by the complainant when the examiner determines that the employee's testimony is necessary. The examiner may also request the appearance of any Federal agency employee whose testimony the examiner determines to be necessary to furnish information pertinent to the complaint. The examiner shall notify the complainant of the reasons for denying a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing.

F. Record of Hearing

The hearing shall be recorded and transcribed verbatim. All documents submitted to and accepted by the complaints examiner at the hearing shall be made a part of the record of hearing. Documents submitted to the examiner by either side which are accepted shall be made available to the other party as follows:

1. The Agency representative shall furnish a copy to the complainant, and

2. The complainant shall make the document available for reproduction by the Agency representative.

G. Findings, Analysis and Recommendations

1. The complaints examiner shall transmit to the DEEO the complaint file, including the record of the hearing and the examiner's findings and analysis regarding the matter which gave rise to the complaint and the general environment out of which the complaint arose; a recommended decision on the merits of the complaint; and recommended remedial action, where appropriate. The examiner shall also notify the complainant of the date on which this was done.

IX.G

2. The complaints examiner shall transmit, if appropriate, by separate letter to the DEEO whatever findings and recommendations the examiner considers appropriate with respect to conditions in AID which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

H. Cost of Hearings

Cost for the hearing for any unresolved complaint will be paid from AID's general administrative funds.

X. Avoidance of Delay

A. The complaint shall be resolved promptly. To this end, both the complainant and AID shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under section IX.

B. The DEEO or designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. In lieu of canceling the complaint for failure to prosecute, the DEEO may adjudicate the complaint if sufficient information is available.

C. If the complaints examiner has submitted a recommended decision finding discrimination and AID has not issued a final decision within 180 calendar days after the date the complaint was filed, the examiner's recommended decision shall become a final decision binding on AID thirty calendar days after submission to AID. In such event, AID will notify the complainant that the examiner's recommended decision is AID's final Agency decision and will furnish the complainant a copy of the examiner's findings, analysis and recommended action under section IX. Additionally, AID shall furnish the complainant a copy of the hearing record and notify the complainant in writing of the right of appeal to EEOC, the right to file a civil action pursuant to section XIX below, and the applicable time limits.

XI. Final Agency Decision and Notice of Right to Appeal

Except as stated in section VIII above, the DEEO shall render the AID decision on the complaint based upon information in the complaint file. The decision shall be in writing to the complainant and the complainant's representative. The decision shall require any remedial action authorized by law determined necessary or desirable to resolve issues of discrimination and to promote the policy of equal opportunity. The letter shall also advise the complainant of the right to appeal to EEOC the decision of the DEEO if the complainant is not satisfied with it, or to file a civil action, and of the applicable time limits.

XII. Attorney's Fees

AID may award the payment of attorney's fees in conjunction with a finding of discrimination made in accordance with this Appendix except that no attorney's fees may be paid in cases where there is a finding of age discrimination. In all cases, payment of attorney's fees will be made in accordance with 29 CFR 1613.271(c). Payment of attorney's fees shall be made from AID's general administrative funds.

XIII. Appeal to the Equal Employment Opportunity Commission

A. Entitlement

1. Except as provided by section XIII.A3 below, a complainant may appeal to EEOC AID's Final Agency Decision:

a. To reject the complaint, or a portion thereof, for reasons covered by section IV.E; or

b. To cancel the complaint because of the complainant's failure to prosecute the complaint; or

c. On the merits of the complaint, under sections VIII.B or XI if the decision does not resolve the complaint to the complainant's satisfaction.

2. Except as provided by section XIII.A3 below, a complainant may appeal to the EEOC on issues of employment discrimination raised in a negotiated grievance procedure, where AID's negotiated labor-management agreement permits such issues to be raised therein. A complaint may appeal the decision of:

a. The Agency head on the grievance,

b. The arbitrator on the grievance, and

c. The FLRA on exceptions to the arbitrator's award.

3. A complainant may not appeal under this subsection, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, or is before the FLRA. In such circumstances, any appeal prematurely filed shall be dismissed without prejudice.

4. A complainant may not appeal to EEOC under XIII.A1 above when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to EEOC.

XIII.

B. Where to Appeal

The complainant shall file an appeal in writing, either personally or by mail, with the Director, Office of Review and Appeals; Equal Employment Opportunity Commission; 2401 "E" Street, N.W.; Washington, D.C. 20506.

C. Time Limit

1. Except as provided in section XIII.C3 below, a complainant must file a Notice of Appeal within twenty calendar days after receipt of the notice of final decision on the complaint from AID. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by EEOC. The EEOC will review a final agency decision only when the agency makes a determination on all issues in the complaint, including whether or not to award attorney's fees or costs. However, an agency decision to reject or cancel a complaint in part shall be final when issued pursuant to section IV.E.

2. When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to twenty days after:

a. Expiration of the time during which the union and the Agency may move a matter to the next stage of the grievance process;

b. Receipt of an arbitrator's award; or

c. Receipt of the decision of the FLRA on exceptions to the arbitrator's award.

3. This time limit will not be extended by EEOC unless the complainant submits a written statement showing that the complainant was not notified of the prescribed time limit and was not otherwise aware of it, or that circumstances beyond the complainant's control prevented filing of a Notice of Appeal within the time limit. EEOC will exercise its discretion to extend the time limit and accept the Appeal.

XIV. Relationship to other Appeals

When the basis of the complaint of discrimination involves an action which is otherwise appealable to EEOC and the complainant, having been informed by AID of the right to proceed under this Appendix elects to proceed by appeal to EEOC, the case will be processed under the regula- tions appropriate to that appeal when the complainant makes a timely appeal to EEOC in accordance with those regulations.

XV. Reports to the Commission

The DEEO shall report to EEOC information concerning precomplaint counseling and the status and disposition of complaints and on such other matters relating to the enforcement of EEO policies as EEOC may require.

XVI. Joint Processing and Consolidation of Complaints

A. With the written permission of the complainants, AID may jointly process two or more discrimination complaints filed by employees or applicants for employment with AID consisting of substantially similar allegations.

B. Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of AID or EEOC, be consolidated for processing after notifying the individual that the complaints will be consolidated for expeditious processing.

XVII. Freedom from Restraint, Interference, Coercion or Reprisal

A. Freedom from Reprisal

Complainants, their representatives, witnesses, DEEOs, EEOOs, EEO Investigators, EEO Counselors, and other AID officials responsible for processing discrimination complaints shall be free from restraint, interference, coercion or reprisal at all stages in the presentation and processing of a complaint. Any action taken in reprisal because a person has opposed any practice forbidden by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e or E.O. 11478, or has filed a complaint, testified, assisted or participated in any matter, investigation, procedure or hearing covered by this Appendix shall be considered a discriminatory practice.

B. Review of Allegations of Reprisal

1. A complainant, a complainant's representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint, may have the allegation reviewed as an individual complaint of discrimination subject to this Appendix.

2. If, after completion of the investigation of a complaint under section VI, a complainant requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegation as an issue in the complaint at hand or refer the matter to AID for further processing under the procedure chosen by the complainant pursuant to this section.

XVIII. Corrective Actions

A. Corrective Actions Involving an Applicant

1. When AID or EEOC finds that an applicant for employment has been discriminated against and, but for that discrimination would have been appointed, AID shall offer, in writing, employment to a position of commensurate grade and type as that denied the applicant.

2. The applicant shall have fifteen calendar days from receipt of AID's offer within which to accept or decline the offer. Failure to notify AID within the time limit will be considered a declination of the offer, unless it can be shown that the applicant was not notified of the prescribed time limit and was not otherwise aware of it, or that circumstances beyond the applicant's control prevented response within the prescribed time limit.

3. If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired subject to the limitation in XVIII.A5 below. Back pay, computed as prescribed by 5 CFR 550.805 shall be awarded from the beginning of the retroactive period subject to the limitation in XVIII.A5 below, until the date the individual actually enters on duty. The individual shall be deemed to have performed service for AID during this period retroactively for all purposes except meeting service requirements for completion of a required probationary or trial period.

4. If the offer is declined, AID shall award the individual a sum equal to the back pay that would have been received, computed as prescribed by 5 CFR 550.805, from the date the individual would have been appointed until the date the offer was made, subject to the limitations in XVIII.A5 below. In its offer, AID shall inform the applicant of the right to this award in the event the applicant declines the offer.

5. When AID or EEOC finds that discrimination existed when the applicant was considered for employment, but also finds clear and convincing evidence that the applicant would not have been hired even absent discrimination, AID shall consider the individual for any existing vacancy of the type and grade for which the applicant was considered initially and is qualified before considering other candidates. If the individual is not selected, AID shall record the reasons for the nonse- lection. If no vacancy exists, AID shall give the individual priority consideration for the next vacancy for which the individual is quali- fied. This priority shall take precedence over priorities provided under other AID regulations.

6. AID is authorized to make the prior described appointments or awards of back pay pursuant to 29 CFR 1613.271(a).

7. A period of retroactivity or a period for which back pay is awarded under this section may not extend from a date earlier than two years prior to the date on which the applicant filed the complaint (see 29 CFR 1613.271(a)(4)).

XVIII.

B. Corrective Action Involving an Employee

1. When AID or EEOC finds that an employee of AID was discriminated against and as a result of that discrimination was denied an employment benefit or an adverse administrative decision was made, AID shall take remedial action consistent with 29 CFR 1613.271(b) which shall include, but not limited to, one or more of the following actions:

a. Retroactive promotion with back pay computed as prescribed by 5 CFR 550.805 unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade even absent discrimination. The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but in any event, not to exceed the date the employee would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but in any event, not to exceed the date the employee would have been promoted.

b. Consideration for promotion to a position for which the employee is qualified before considering other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. If the individual is not selected, AID shall record the reasons for nonselection. This priority consideration shall take precedence over priorities under other AID regulations.

c. Cancellation of an unwarranted personnel action and restoration of the employee to the employee's previous status.

d. Expungement of any reference to or any record of an unwarranted disciplinary action that is not a personnel action from AID records.

e. Full opportunity to participate in the employee benefit that was denied (e.g., training, preferential work assignments, overtime scheduling).

2. Correction including cancellation of an unwarranted personnel action documented by a Standard Form 50 shall be made in accordance with provisions of FPM 990-1, and appropriate instructions.

XVIII.B

3. AID shall proceed expeditiously and affirmatively to make an employee whole under section XVIII.B above. If the contested position is vacant and available, it shall be made available to the employee. If the contested position is not vacant and available, a position of similar series, grade, pay, rank, and/or status shall be immediately located and made available to the employee. Any employee who occupies a position in contention shall not be adversely affected by a finding of discrimination. If no such position is available, the employee shall be given priority consideration for the first available position the employee is qualified to occupy. Back pay from finding of discrimination until the employee is placed in an appropriate position will be computed pursuant to 5 CFR 550.805.

XIX. Civil Actions

A. Statutory Right

An employee or applicant is authorized by section 717(c) of the Civil Rights Act, as amended, 84 Stat. 112. to file a civil action in an appropriate U.S. District Court:

1. Within thirty calendar days of receipt of notice of final action taken by AID on a complaint;

2. After 180 calendar days from the date of filing a complaint with AID if there has been no decision;

3. Within thirty calendar days of receipt of notice of final action taken by EEOC on the complaint; or

4. After 180 calendar days from the date of filing an appeal with the Commission if there has been no EEOC decision.

B. Notice of Right

AID shall notify an employee or applicant of the right to file a civil action, and of the thirty-day time limit for filing, in any final action on a complaint under sections IV, VIII or XI. The EEOC shall notify an employee or applicant of the right to file a civil action, and of the thirty-day time limit for filing, in any decision under 29 CFR 1613.234. AID shall notify the complainant of the right to request that the district court appoint an attorney to represent the complainant in the event the complainant decides to file a civil action arising from the complaint of discrimination.

XIX.

C. Limitations on Right to File a Civil Action

The time limits specified in XIX.A and B above do not apply to age discrimination complaints filed against AID. Complainants who file age discrimination complaints and who wish to file a civil action based on that complaint must exhaust administrative remedies prior to filing a civil action. When the individual has not filed a complaint alleging age discrimination with AID, the individual may file a civil action after giving the EEOC thirty days notice of an intent to file such an action. Such an action must be filed within 180 days after the alleged unlawful practice occured.

APPENDIX 5B

CLASS DISCRIMINATION COMPLAINT PROCESS

I. Definitions

For the purpose of these procedures, the term:

A. Class is a group of AID employees, former AID employees, and/or applicants for employment with AID, on whose behalf it is alleged that they have been, are being, or may be adversely affected by an Agency personnel management policy or practice which the Agency has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, physical or mental handicap and/or age.

B. Class Complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

1. The class is so numerous that a consolidated complaint of the members of the class is impractical;

2. There are questions of fact common to the class;

3. The claims of the agent of the class are typical of the claims of the class;

4. The agent of the class, or the agent's representative, if any, will fairly and adequately protect the interests of the class.

C. An agent of the class is a class member who acts for the class during the processing of the class complaint.

D. Age is an inclusive term which means the age of at least 40 years.

II. Precomplaint Processing

A. An employee or applicant who wishes to be an agent and who alleges individual discrimination shall consult an EEO Counselor within ninety calendar days of the matter giving rise to the allegation of individual discrimination or ninety calendar days of its effective date if a personnel action.

B. The Counselor shall:

1. Advise the aggrieved person of the discrimination complaint procedures, of the right to representation throughout the precomplaint and complaint processes, and of the right to anonymity only during the precomplaint process;

II.B

2. Make whatever inquiry is believed necessary;

3. Make an attempt at informal resolution through discussion with appropriate officials;

4. Counsel the aggrieved person concerning the issues involved;

5. Inform the EEOO and other appropriate officials when corrective action is believed necessary;

6. Keep a record of all counseling activities; and

7. Summarize actions and advice in writing both to the EEOO and the aggrieved person concerning the issues in the personnel management policy or practice.

C. The Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than thirty calendar days after the date on which the allegation of discrimination was called to the attention of the Counselor. During the final interview, the Counselor shall inform the aggrieved person in writing that counseling is terminated and of the right to file a class complaint of discrimination with appropriate officials of AID.

D. The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint nor to encourage the person to file a complaint.

E. The Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except when authorized to do so, in writing, by the aggrieved person.

F. AID shall ensure that full cooperation is provided by all employees to Counselors in the performance of their duties under this section. Counselors shall have routine access to AID personnel records without unwarranted invasion of privacy.

G. Corrective action taken as a result of counseling shall be consistent with laws, E.O.s, and Civil Service rules, regulations, and instructions.

III. Filing and Presentation of a Class Complaint

A. The complaint must be submitted in writing by the agent or the agent's representative and be signed by the agent.

B. The complaint shall set forth specifically and in detail:

1. A description of the Agency personnel management policy or practice giving rise to the complaint; and

III.B

2. A description of the resultant personnel action or matter adversely affecting the agent.

C. The complaint must be filed not later than fifteen calendar days after the agent's receipt of the notice of final interview with the Counselor.

D. Complaints may be filed with the Administrator, or designee, and the DEEO.

E. A complaint shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

F. At all stages, including counseling, in the preparation and presentation of a complaint or claim and appeal from a decision on a complaint or claim, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of the individual's own choosing, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

G. If the agent is an employee in an active duty status, the agent shall be provided a reasonable amount of official time to prepare and present the complaint. AID employees, including attorneys representing AID employees in discrimination complaint cases, must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is not inconsistent with the faithful performance of their duties.

IV. Acceptance, Rejection or Cancellation

A. Within ten calendar days of AID's receipt of a complaint, AID shall forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the EEOC. The EEOC shall assign the complaint to a complaints examiner who may be an employee of the Federal Employee Appeals Authority and who is not an employee of the agency in which the complaint arose.

B. The complaints examiner may recommend that AID reject the complaint, or a portion thereof, for any of the following reasons:

1. It was not timely filed;

2. It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in AID or which has been resolved or decided by AID;

IV.B

3. It is not within the purview of this Appendix;

4. The agent failed to consult a Counselor in a timely manner;

5. It lacks specificity and detail;

6. It was not submitted in writing or was not signed by the agent;

7. It does not meet the prerequisites of a class as described in 29 CFR 1613.604(b)(7).

C. If an allegation is not included in the Counselor's report, the complaints examiner shall afford the agent fifteen calendar days to explain whether the matter was discussed and if not, why the agent did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the examiner may recommend that AID reject the allegation. If the explanation is satisfactory, the examiner may refer the allegation to AID for further counseling of the agent.

D. If an allegation lacks specificity and detail, the complaints examiner shall afford the agent fifteen calendar days to provide specific and detailed information. The examiner may recommend that AID reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

E. The complaints examiner may recommend that AID extend the time limits for filing a complaint and for consulting a Counselor when the agent, or representative, shows that the agent was not notified of the prescribed time limits and was not otherwise aware of them or that circumstances beyond the agent's control prevented timely action.

F. When appropriate, the complaints examiner may recommend that a class be divided into subclasses and that each subclass be treated as a class. The provisions of this section then shall be construed and applied accordingly.

G. The complaints examiner may recommend that AID cancel a complaint after it has been accepted because the agent failed to prosecute the complaint. This action may be taken only after the examiner has provided the agent a written request, including notice of proposed cancellation, that the agent provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within fifteen calendar days of receipt of the request.

H. An agent must be informed by the complaints examiner in a request under sections IV.C or D above that the complaint may be rejected if the information is not provided.

IV.

I. The complaints examiner's recommendation to AID on whether to accept, reject or cancel a complaint shall be transmitted in writing to AID, the agent and the agent's representative. The examiner's recommendation to accept, reject or cancel shall become AID's decision unless AID rejects or modifies the decision within ten calendar days of its receipt. AID shall notify the agent, the agent's representative and the examiner of its decision to accept, reject or cancel a complaint. The notice shall inform the agent of the right to proceed with an individual complaint of discrimination and to appeal the final Agency decision on the matter to the Office of Review and Appeals, and the right to file a civil action.

V. Notification and Opting Out

A. Within fifteen calendar days after acceptance of a class complaint, AID shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

B. A notice shall contain:

1. AID's name or organizational segment thereof, its location, and the date of acceptance of the complaint;

2. A description of the issues accepted as part of the class complaint;

3. An explanation that class members may remove themselves from the class by notifying AID within thirty calendar days after issuance of the notice; and

4. An explanation of the binding nature of the final decision on or resolution of the complaint.

VI. Avoidance of Delay

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

VII. Freedom from Restraint, Interference, Coercion and Reprisal

A. Agents, claimants, their representatives, witnesses, the DEEO, EEO Officers, EEO Investigators, EEO Counselors and other AID employees having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under section II above, or any time thereafter.

VII.

B. A person identified in section VII.A above, if a Federal employee or applicant, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with provisions of Appendix 5A, section XVII.

VIII. Obtaining Evidence Concerning the Complaint

A. General.

1. Upon the acceptance of a complaint, the DEEO or designee shall designate an Agency representative. The Agency representative shall not be an alleged discriminating official or any individual designated in this Appendix as having any specific role in complaint processing.

2. The AID representative shall consult officials named or identified as responsible for the alleged discrimination, if any, and other AID officials as necessary. In such consultation, the representative will be subject to Civil Service regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

B. Development of Evidence.

1. The complaints examiner shall notify the agent or agent's representative and the Agency representative that a period of not more than sixty calendar days will be allowed both parties to prepare their cases. The examiner may extend this time period upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the complaint. Evidence may be developed through interrogatories, depositions and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious or privileged.

2. In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the examiner renders a report of findings and recommendations on the merits of the complaint, a party's failure to comply with the examiner's ruling on an evidentiary request may be taken into account.

3. During the time period for development of evidence, the complaints examiner may direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an Investigator trained and/or certified by the Commission.

4. Both parties shall furnish the complaints examiner all materials they wish examined and such other material as the examiner may request.

IX. Opportunities for Resolution of the Complaint

A. The complaints examiner shall furnish a copy of all materials obtained concerning the complaint to both parties and provide opportunity for the agent to discuss materials with the Agency representative and attempt resolution of the complaint.

B. At any time after acceptance of a complaint, the complaint may be resolved by agreement of AID and the agent to terms offered by either party.

C. If resolution of the complaint is reached, the terms of the resolution shall be reduced to writing and signed by the agent and Agency head or designee. A resolution may include a finding on the issue of discrimination and must include any corrective action agreed upon. Corrective action must be consistent with laws, E.O.s and Civil Service regulations, rules and instructions. The agent shall be provided a copy of the resolution.

D. Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by AID. A resolution shall bind all members of the class.

E. If AID does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, the agent's representative, or class members, AID upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of AID to reinstate the complaint is grounds for appeal by the agent to the Appeals Review Board.

X. Hearing

On the expiration of the period allowed for preparation of the case, the complaints examiner shall set a date for a hearing. The hearing shall be conducted in accordance with 29 CFR 1613.610.

XI. Report of Findings and Recommendations

A. The complaints examiner shall transmit to the DEEO or designee:

1. The record of the hearing;

2. The examiner's findings and analysis with regard to the complaint; and

3. A report of the examiner's findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

XI.

B. The complaints examiner shall notify the agent of the date on which the report of findings and recommendations was forwarded to the DEEO or designee.

XII. Agency Decision

A. Within thirty calendar days of receipt of the report of findings and recommendations issued under section XI above, the Agency head or designee shall issue a decision to accept, reject or modify the findings and recommendations of the complaints examiner.

B. The Agency decision shall be in writing and shall be transmitted to the agent or agent's representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.

C. When the Agency's decision is to reject or modify the findings and recommendations of the complaints examiner, the decision shall contain the specific reasons in detail for the Agency's decision.

D. If the Agency has not issued a decision within thirty calendar days of receipt of the complaints examiner's report of findings and recommendations, the findings and recommendations shall become the final Agency decision. The Agency shall transmit the final Agency decision and the record of the hearing to the agent or agent's representative within five calendar days of the expiration of the thirty day period.

E. The Agency decision shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Agency shall:

1. Advise the agent and agent's representative that any request for attorney's fees must be documented and submitted within twenty calendar days of receipt,

2. Review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate, and

3. Record the basis for its decision to take, or not to take, disciplinary action, but this decision shall not be recorded in the complaint file.

F. When the final Agency decision provides for an award of attorney's fees and/or costs, the amount of these awards shall be determined under Appendix 5A, section XII. When the Agency determines not to award attorney's fees or costs, the Agency shall set forth in its decision the specific reasons for denying the award.

XII.

G. The Agency shall inform the agent or the agent's representative of the right to appeal the final Agency decision to EEOC's Office of Review and Appeals, the right to file a civil action in accordance with section XVII below, and the applicable time limits.

H. A final Agency decision on a class complaint shall be binding on all members of the class and the Agency.

XIII. Notification to Class Members of Decision

AID shall notify class members of its decision and corrective action, if any, using the same media employed to advise employees of the class complaint. Where appropriate, the notice shall include information concerning the rights of class members to seek individual relief and the procedures to be followed. Notice shall be given by AID within ten calendar days of the transmittal of its decision to the agent.

XIV. Corrective Action

A. When discrimination is found, AID must eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action to the agent in accordance with Appendix 5A, section XIX. Corrective action in all cases must be consistent with law; E.O.s; and Civil Service regulations, rules and instructions.

B. When discrimination is found and a class member believes that but for that discrimination employment or an employment benefit would have been received, the class member may file a written claim with the DEEO within thirty calendar days of notification by AID of its decision.

C. The claim must include the specifics in detail showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

D. AID shall attempt to resolve the claim for relief within sixty calendar days after the date the claim was postmarked, or, in the absence of a postmark, within sixty calendar days after the date it was received by an official with whom claims may be filed. If AID and the claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, AID shall refer the claim, with recommendations concerning it, to the complaints examiner.

E. The complaints examiner shall notify the claimant of the right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with 29 CFR 1613.610. If no hearing is requested, the examiner may hold a hearing to obtain necessary evidence concerning the claim.

XIV.

F. The complaints examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under sections XI and XII above.

G. If the complaints examiner determines that the claimant is not a member of the class or that the claim was not timely filed, the examiner shall recommend rejection of the claim and give notice of that action to AID, the claimant and the claimant's representative. Such notice shall include advice as to the claimant's right to appeal to the Office of Review and Appeals or to file a civil action in accordance with the provisions of this Appendix.

XV. Appeal to the Office of Review and Appeals

A. An agent may appeal to the EEOC's Office of Review and Appeals the decision of the DEEO:

1. To reject or cancel the agent's complaint, or a portion thereof, for reasons covered by section IV above;

2. To refuse to reinstate the complaint for further processing in accordance with the provisions of section IX.E above; and

3. On the merits of the complaint and/or corrective action.

B. A claimant may appeal to the Office of Review and Appeals from a decision of the Administrator or designee:

1. To cancel or reject a claim for individual relief in accordance with sections XIV.F and G above; and

2. On the merits of the claim for individual relief.

C. An appeal may be filed at any time after receipt of AID's final decision, but not later than fifteen calendar days after receipt of that decision except when the appellant shows that notification of the prescribed time limit was not provided, and that the appellant or representative were not otherwise aware of it, or that circumstances beyond their control prevented appeal within the prescribed time limit.

D. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Office of Review and Appeals. The review will be made upon the existing record to determine if AID's decision is in accord with applicable laws; E.O.s; or Civil Service regulations, rules, and instructions and is supported by substantial evidence.

XVI. Reopening and Reconsideration by the Commissioners

The Commissioners may reopen and reconsider any previous decision of a Commission office on their own motion or at the request of either party in accordance with provisions of 29 CFR 1613.632.

XVII. Civil Actions-Statutory Right

A. An agent who has filed a complaint or a claimant who has filed a claim for relief based on race, color, religion, national origin or sex discrimination is authorized to file a civil action in an appropriate U.S. District Court:

1. Within thirty calendar days of receipt of notice of final action taken by AID on a complaint or claim;

2. After 180 calendar days from the date a complaint or claim was filed with AID if there has been no decision on the complaint or claim;

3. Within thirty calendar days of receipt of the decision of the Office of Review and Appeals on the appeal; or

4. After 180 calendar days from the date an appeal was filed with the Office of Review and Appeals, if there has been no Office of Review and Appeals decision.

B. An agent who filed a complaint or a claimant who has filed for relief based on age discrimination, is authorized to file a civil action in an appropriate U.S. District Court.

XVIII. Notice of Right

When the agent alleges that AID discriminated against a class on the basis of race, color, religion, sex, national origin, and/or age, or a claimant files for relief, AID or the EEOC shall notify the agent or claimant of the right to file a civil action in any final action on a complaint, or claim, under sections IV, XII,XIV, or XV above.

XIX. Effect on Administrative Processing

The filing of a civil action by an agent or claimant does not terminate Agency processing of a complaint/claim or Office of Review and Appeals processing of an appeal under this Appendix.

APPENDIX 5C

DISCRIMINATION COMPLAINTS BASED ON HANDICAP

I. Purpose

A. This Appendix sets forth the policy under which AID shall establish a continuing program to ensure nondiscrimination on account of handicap and the regulations under which AID will process complaints of discrimination based on handicap.

II. Definitions

A. Handicapped person is defined for this section as one who:

1. Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

2. Has a record of such an impairment, or

3. Is regarded as having such an impairment.

B. Physical or mental impairment means:

1. Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

C. Major life activities includes functions such as: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

D. Has a record of such an impairment means:

Has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

E. Is regarded as having such an impairment means:

1. Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;

II.E

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment or;

3. Has none of the impairments defined in II.B above but is treated by an employer as having such an impairment.

F. Qualified handicapped person means:

A handicapped person who, with or without reasonable accommodation and access, can perform the essential functions of the position in question, depending upon the type of appointing authority being used:

1. Meets the experience and/or education requirements (which may include passing a written test) of the position in question, or

2. Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

III. General Policy

AID shall give full consideration to the hiring, placement and advancement of qualified handicapped persons and shall not discriminate against a qualified handicapped person.

IV. Reasonable Accommodation

A. AID shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless AID demonstrates that the accommodation would impose an undue hardship on the operation of its program.

B. Reasonable accommodation may include, but shall not be limited to:

1. Making facilities readily accessible to and usable by handicapped persons;

2. Job restructuring, part-time or modified work schedules;

3. Acquisition or modification of equipment or devices such as TTD's;

4. Appropriate adjustment or modification of examinations;

5. The provision of readers and interpreters;

6. Appropriate office assignments; and

7. Other similar actions.

IV.

C. In determining, pursuant to IV.A above, whether an accommodation would impose an undue hardship on the operation of AID, factors to be considered include:

1. The overall size of the program with respect to the number of employees, number and type of facilities and size of budget;

2. The type of Agency operation, including the composition and structure of the Agency's work force; and

3. The nature and the cost of the accommodation.

D. Procedure

1. An applicant or employee may request reasonable accommodation by filing a written request describing the handicap which necessitates the reasonable accommodation and describing the required accommodation. An employee may, but is not required, to use the form provided as Attachment B to request an accommodation. This written request should be made to the employee's supervisor or, in the case of an applicant, brought to the attention of the Handicap Program Manager.

2. The supervisor or Handicap Program Manager shall confer with the appropriate management officials regarding the request and a decision shall be made and a written response delivered to the applicant or employee within fifteen working days of the request. An applicant or employee, if not satisfied with the decision or if the accommodation is not delivered, may file a complaint using the procedures set out in Appendix 5A.

V. Employment Criteria

A. AID will not use any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless:

1. The test score or other selection criterion, as used by AID, is shown to be job-related for the position in question, and

2. Alternative job-related tests or criteria are not shown by OPM's Personnel Research and Development Center to be available.

B. AID shall select and administer employment tests so as to ensure that, when administered to an applicant/employee who has a handicap that impairs sensory, manual, reading, writing or speaking skills, test results accurately reflect the applicant's or employee's ability to perform the position or type of position in question rather than reflecting the applicant's/employee's impaired sensory, manual, reading, writing or speaking skills (except where those skills are the factors that the test purports to measure).

VI. Preemployment Inquiries

A. Except as provided in VI.B below, AID may not conduct a preemployment medical examination and will not make preemployment inquiries of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap.

B. Nothing in this section shall prohibit AID from conditioning an employment offer on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

1. All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition, and

2. The results of such an examination are used only in accordance with the requirements of this section. Nothing in this section shall be construed to prohibit the gathering of preemployment medical information for the purposes of special appointing authorities for handicapped persons.

C. Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained according to the existing maintenance, use, and disposition schedules for medical records, except that:

1. Supervisors and managers may be informed regarding necessary accommodations; and

2. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment.

VII. Physical Access to Buildings

A. AID will not discriminate against qualified handicapped applicants or employees due to the inaccessibility of its facility.

B. For the purpose of this section, a facility shall be deemed accessible if it is in compliance with the Architectural Barriers Act 1968.

VIII. Processing Complaints - General

All complaints of discrimination on the basis of some physical or mental handicap will be processed in accordance with the principles and procedures found in Appendix 5A, sections III through XVIII and Appendix 5B, sections I through XVI.

IX. Coverage

AID will process complaints of discrimination based on acts or actions that occurred on or after April 10, 1977 or complaints filed through the EEO process or as a grievance which were pending with AID, CSC or a Federal Court on April 10, 1978, provided:

1. AID was notified of the complaint of discrimination within thirty calendar days of the alleged discrimination act, or, if a personnel action, within thirty calendar days of its effective date, or

2. The complaint of discrimination was not adjudicated under some other grievance or appeals procedure.

ATTACHMENT 5A

Complaint File For Individual and Class Complaints

A. AID shall establish a complaint file containing all documents pertinent to the complaint. The complaint file shall include:

1. A copy of the Counselor's notice of final interview with the aggrieved person under Appendix 5A, section III.B4 and Appendix 5B, section II.C;

2. A copy of the Counselor's written report under Appendix 5A, section IV.D and Appendix 5B, section II.C to the EEOO on whatever precomplaint counseling efforts were made with regard to the complainant's case;

3. The complaint;

4. A copy of any notice of acceptance of the complaint;

5. A copy of any notice of rejection or cancellation of the complaint by AID;

6. The investigative file; if any;

7. If the complainant withdraws the complaint, a signed statement by the complainant to that effect;

8. If adjustment of the complaint is attempted, written documentation of the AID representative's efforts;

9. If adjustment of the complaint is reached under Appendix 5A, section VII or Appendix 5B, section IX, a signed copy of the resolution;

10. If no adjustment of the complaint is reached under Appendix 5A, section VII or Appendix 5B, section IX, a copy of the proposed disposition of the complaint and of the right to a hearing or decision by the DEEO without a hearing;

B. The complaint file shall not contain any document that has not been made available to the complainant or the complainant's representative.

C. A decision rendered on a class complaint shall be binding on all members of the class and the Agency.

ATTACHMENT 5B

Request for Reasonable Accommodation

This is a formal request for a reasonable accommodation, filed pursuant to section 501 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 791 and its implementing regulations, 29 CFR 1613.701 et seq. and this AID staff instruction.

I (describe the disability and necessity for an accommodation) and hereby request (describe in detail the accommodation needed) as a reasonable accommodation.

SIGNATURE DATE

NOTE: This form must be returned to your supervisor. You are entitled to a written ruling within fifteen working days from the date you submit the request. If you have not received a response within this time period, you should write a memo to your supervisor requesting the required response and send a copy to the next higher level of supervision. If you are not satisfied with the response or if you do not receive a response, you may file a complaint consistent with Chapter 5, Handbook 24.

CHAPTER 6 (RESERVED)

CHAPTER 7

DESIGNATION OF ACTING PERSONNEL

7A. Purpose

This chapter provides general guidance for the designation of acting heads of organizational units in AID/W.

7B. Applicability

This chapter applies to all heads of organizational units in AID/W at the level of division chief or higher. Designation of heads of organizational units at a lower level is left to the discretion of the appropriate supervising officer. (See also Chapter 8 - Designation of Acting Mission Directors.)

7C. Policy

1. Situations Requiring Designations

Designations of acting heads of organizational units are made for all positions at the level of division chief or higher when:

a. Such positions become vacant.

* b. The incumbent is expected to be absent for a period in excess of 3 working days, or for a lesser period if he/she considers this desirable.

2. Authority to Make Designations

Authority to designate acting personnel is vested in the supervisor in the case of vacancies and in the incumbent in the case of temporary absences.

3. Officers Eligible for Designations

a. If the officer has a deputy, he/she shall be designated if present.

b. If the officer does not have a deputy or if the deputy is not present, the designee shall be an officer who reports to either the incumbent of the position to which he/she is being designated or to the immediate supervisor of the incumbent. *

* Revised

BEST AVAILABLE COPY

7C

4. Forms of Designations

a. All designations are made by memorandum from the authorizing officer to the designee, with appropriate internal distribution, and, in the case of office director or higher, to the Office of the Executive Secretary (ES). A copy of each such designation is sent to the supervisor or the authorizing officer.

b. Distribution of a memorandum of designation is not necessary outside the major affected organizational unit (i.e., Geographic Bureau or AID/W Office) unless it is needed to inform other AID/W Offices for the preparation of signature correspondence requiring a named officer's signature.

c. AID/W Notices are issued to announce designation of officials to act in the affected position only when:

(1) Vacancies occur in the positions of Presidential appointees and heads of other offices and staffs who report directly to the Administrator.

(2) The Administrator, Deputy Administrator, or Assistant *to the* Administrator for Management is to be absent in excess of 3 days.

(3) There is sufficient justification in the opinion of an Assistant Administrator to warrant the expense of announcing the particular designation to the entire headquarters or Agency-wide.

Requests for issuance of AID/W Notices in such instances are processed by *M/SER/IRM/MMP* in accordance with Handbook 18, Part I, Chapter 6.

5. Authority of Acting Heads of Organizational Units

Officers designated to act as heads of organizational units in AID/W are empowered to exercise all of the authorities vested in the heads of such units unless specifically prohibited from doing so in the instrument designating them, except that the acting head of an organizational unit may not designate another officer to act for him/*her* during his/*her* temporary absence. In such cases, the authority to designate an alternate acting head is vested in the supervisor of the acting head of the unit.

BEST AVAILABLE COPY

CHAPTER 8

DESIGNATION OF ACTING MISSION DIRECTORS

8A. Purpose

This chapter specifies the circumstances when an Acting Director of Mission shall be designated, sets forth the procedures for designating an Acting Director of Mission, and specifies the authority of an Acting Director of Mission.

8B. Applicability

This chapter applies to AID Mission Directors, Deputy Directors, and AID Representatives whose appointments are made in accordance with the provisions of Section 631b of the Foreign Assistance Act of 1961, as amended. This chapter does not apply to posts where the principal diplomatic officer has been delegated AID authorities normally delegated to AID Mission Directors. In such cases the principal officer authorized to act for the Chief of the Diplomatic Mission is empowered to exercise such authority. The Foreign Affairs Manual should be consulted for the order of succession which is appropriate in the absence of the Ambassador or principal U.S. representative. The authority to designate the Acting Mission Director is not redelegatable.

8C. Designation of Acting Director of Mission

1. When a Deputy Director of Mission is Present

In the event of death, disability, resignation. or other event causing a vacancy in the office of Director of Mission, or in the temporary absence of the Director of Mission, the Deputy Director of Mission is hereby designated as Acting Director of Mission.

2. When no Deputy Director of Mission is Present (in the event that the position of Deputy Director of Mission is vacant, or the incumbent is temporarily absent, or the position of Deputy Director of Mission has not been established):

a. Under Foreseen Circumstances

When a Director of Mission, under foreseen circumstances, finds it necessary to be absent temporarily from his/her post and no Deputy Director is present, the Director of Mission may at his/her own discretion

BEST AVAILABLE COPY

8C2a

delegate in writing such of his/*her* authority as he/*she* deem necessary to such officer as he/*she* may designate, advising the appropriate Geographic Bureau of the nature of this action if such absence is expected to exceed 7 calendar days.

b. Under Unforeseen Circumstances

When neither a Director nor a Deputy Director of Mission is present, under unforeseen circumstances, the Geographic Assistant Administrator responsible for the region in which the Mission is located designates, in writing, an Acting Director of Mission and notifies the Mission accordingly.

8D. Authority of Acting Directors of Mission

Acting Directors of Mission are authorized to act as a Director of Mission and to exercise all authority of a Director of Mission, unless specifically prohibited from doing so, in the instrument designating them.

INDEX TO THIS HANDBOOK

This index is derived from the Master Index to the AID Handbook series issued under TM HI:2.

The underlying approach to the Master Index is one of unity, with the series of AID Handbooks considered as a single entity in which topics may appear in one, or more than one, of the component volumes.

Each entry in the Master Index that includes a reference to this Handbook is reproduced here in its entirety, thus providing both a guide to this Handbook and useful references to other Handbooks.

The formats for location citations are intended to match their appearance on the Handbook pages. Beyond the standardized Handbook number with its following colon, the citations used in the index reflect the different formats used in the individual Handbooks themselves.

UNDERSTANDING THE CITATIONS

The standard codes and messages that appear throughout the index, and their exceptions, are defined in this section. It is recommended that all users read this section before using the index.

LOCATION CITATIONS

The location citations are grouped in the following pattern:

Handbook number, colon, Chapter number, Paragraph letter, and further breakdown where needed.

The abbreviations such as App. for Appendix; Att. for Attachment; and Sup. for Supplement are also included in the citations wherever necessary.

Special cases and cross reference messages are described on the following page.

An example of the format used is as follows:

AID Financed Export Opportunities 1B:23A2a(3); 15:10C1a(1)

where the term "AID Financed Export Opportunities" is located in Handbook No. 1B, Chapter 23, Section A2a(3); and Handbook 15, Chapter 10, Section C1a(1).

SPECIAL CASES

Although the majority of the location citations follow the pattern described previously, there are these exceptions:

- In some of the Handbooks, a majority of the text is reprinted from the Foreign Affairs Manual (FAM). All FAM citations are marked by a '#' sign before the section number.

- A major portion of Handbook 14 is composed of the Federal Acquisition Regulation (FAR). All citations to this publication are cited as 14:FAR(section number).

- Three Handbook supplements that are basically separate volumes are cited as, 1B: (Procurement Policy), 3A: and 3B: (Project Managers Guidebook).

- In Handbooks which contain both Parts as well as Chapters, the Roman numeral Part number is separated from the Arabic Chapter number by a dash (-). For example: 21:I-2A8, a citation to Chapter 2 of Part I of Handbook 21.

CROSS REFERENCES

These references provide direction for selection of index terms:-

A '<u>see</u>' reference points from an unused term to the one that is used.

'x' is the reverse of <u>see</u> (do not bother to look) and provides a guide to terms that are <u>not</u> used in the index.

'<u>see also</u>' points to terms that are closely related.

-A-

Acting Mission Directors 24:8

Acting personnel 24:7

Administrative leave 27:6
union representation functions 24:4I9
x Excused absence

Affirmative action see
Equal employment opportunity

AFGE 24:4G2a
x American Federation of Government Employees

AFSA 24:4H2a
xAmerican Foreign Service Association

Agreements
AID/AFGE agreement 24:Att.4B

AID ethics program 24:2B
Code of Ethics for Govt. Service 24:Att.2A

AID Office of Personnel Management see
Personnel Management

AID personnel
equal employment opportunity 14:722.8; 14:FAR22.8; 24:1F3
see also Civil Service personnel;
Foreign Service Personnel

AID/AFGE agreement 24:Att.4B

Allotment of salary 19:1Q6; 26:7
union dues 24:4I8; 26:7H4
x Deductions
x Salary deduction

American Federation of Government
Employees see AFGE

American Foreign Service Association see
AFSA

Appeals
class discrimination complaints 24:App.5BXV
individual discrimination complaints 24:App.5AXIII

-C-

Civil Service personnel
labor-management relations 24:4G; 24:Att.4A
see also Executive personnel;
Foreign Service personnel

BEST AVAILABLE COPY

Class discrimination complaints 24:App.5B
appeals 24:App.5BXV
complaint investigation 24:App.5BVIII
corrective action 24:App.5BXIV
discrimination decisions 24:App.5BXII
hearings procedures 24:App.5BX
processing procedures 24:App.5B

Clearances
speaking, writing, teaching activities 24:Att.2E

Code of Ethics for Government Service 24:Att.2A

Complaint file 24:Att.5A

Complaint investigation 24:App.5B
class discrimination complaints 24:App.5BVIII
individual discrimination complaints 24:App.5AVI
x Investigation of complaints

Complaints examiner 24:App.5IXD

Confidential statement of employment & financial interest 24:2D2

Conflict of interest 14:FAR3; 14:FAR9.5
post-employment restrictions 24:2F; 24:Att.2K; 24:Att.2L

Corrective action 24:App.5
class discrimination complaints 24:App.5BXIV
individual discrimination complaints 24:App.5AXVIII

Correspondence types 21:IE

-D-

Decorations from foreign governments 24:Att.2D

Deductions see Allotments of salary

Discrimination complaints 24:5
class discrimination complaints 24:App.5B
complaint file 24:App.5A
handicap discrimination complaints 24:App.5C
individual discrimination complaints 24:App.5A

Discrimination decisions 24:5
class discrimination complaints 24:App.5BXII
individual discrimination complaints 24:App.5AXI

-E-

EEOC (Federal level) 24:5E

EEO counselors 24:App.5AII

Employee conduct see
Employee responsibilities

Employee organizations 24:4G; 24:4H
AFGE 24:4G2a
AFSA 24:4H2a
x Labor unions

Employee responsibilities 24:2
AID ethics program 24:2B
conflict of interest 14:FAR3.1; 24:2F
decorations from foreign governments 24:Att.2D
financial disclosure 24:2D
gifts from foreign governments 24:Att.2D
political activity 24:Att.2G
post-employment restrictions 24:2F; 24:Att.2M
reporting of crimes 24:Att.2F
speaking, writing teaching activities 24:Att.2E

Equal employment opportunity 17:14; 24:5
AID personnel 14:722.8; 14:FAR22.8; 24:1F3
legal authority 24:5D

Executive personnel financial disclosure report 24:2; 32:1G4

Excused absence see Administrative leave

Executive personnel
financial disclosure report 24:2D1

-F-

Federal Labor Relations Authority 24:4G2b

Financial disclosure 24:2D
Confidential Statement of Financial Interest 24:2D2

Financial Disclosure Report 24:2D1

Foreign Service Labor Relations Board 24:4H2b

Foreign service personnel
labor-management relations 24:4H

Former employees
conflict of interest 24:2F; 24:Att.2K; 24:Att.2L
speaking, writing, teaching activities 24:Att.2E

-G-

General schedule (GS) personnel see Civil Service personnel

Gifts from foreign governments 24:Att.2D

-H-

Handicap discrimination complaints 24:App.5C

Handicapped employees 24:5
handicap discrimination complaints 24:App.5C
reasonable accommodation 24:App.5CIV
request for reasonable accommodation 24:Att.5B

Hearing procedures
class discrimination complaints 24:App.5BX
individual discrimination complaints 24:App.5AIX

-I-

Individual discrimination complaints 24:App.5A
appeals 24:App.5AXIII
complaint investigation 24:App.5AVI
corrective action 24:App.5AXVIII
discrimination decisions 24:App.5AXI
hearing procedures 24:App.5AIX
processing procedures 24:App.5AIV

Investigation of complaints see
Complaint investigation

-L-

Labor-management relations 24:4
Civil Service personnel 24:4G; 24:Att.4A
Federal Labor Relations Authority 24:4G2b
employee organizations 24:4G; 24:4H
Foreign Service personnel 24:4H
Foreign Service Labor Relations Board 24:4H2b
management rights and duties 24:4I3
mission operations 24:4I5
policy statements 24:4B
unfair labor practices 24:4I6
union rights and duties 24:4I2

Labor unions see Employee organizations

Legal authority
equal employment opportunity 24:5D

-M-

Management rights and duties 24:4I3

Mission operation 23:ALL
labor-management relations 24:4I5
x Overseas support

-N-

Nondiscrimination see
Equal employment opportunity

-O-

Overseas support see mission operation

-P-

Personnel goals 24:3E3

Personnel Management 17:18C; 24:1F3; 25:1C; 25:10E; 26:1E1

Personnel management evaluation 24:3
personnel goals 24:3E3

Personnel management evaluation checklist 24:App.3A

Personnel policy 24:ALL
employee responsibilities 24:2
equal employment opportunity 24:5
AID personnel 14:722.8; 14:FAR22.8; 24:1F3
labor management relations 24:4

Policy statements
labor management relations 24:4B

Political activity (employees) 24:Att.2G

Post-employment restrictions 24:2F; 24:Att.2K; 24:Att.2L

Processing procedures
class discrimination complaints 24:App.5B
individual discrimination complaints 24:App.5AIV

-R-

Reasonable accommodation 24:App.5CIV
handicapped employees 24:5

Reporting of crimes 24:Att.2F

Request for reasonable accommodation 24:Att.5B

-S-

Salary deductions see Allotment of salary

Speaking, writing, teaching activities 18:III-9; 18:III-Att.A; 24:Att.2E

Statement of Employment and Financial interests 24:2; 32:1G5

-U-

Unfair labor practices 24:4I6

Union dues 24:4I8; 26:7H4

Union representation functions 24:4I9; 27:6G

Union rights and duties 24:4I2

BEST AVAILABLE COPY

TRANSMITTAL MEMORANDUM CHECKSHEET

FOR HANDBOOK 24 - GENERAL PERSONNEL POLICY

24:1		24:26		24:51	
24:2	RL	24:27		24:52	
24:3	✓	24:28		24:53	
24:4	RS	24:29		24:54	
24:5	✓	24:30		24:55	
24:6	✓	24:31		24:56	
24:7	RS	24:32		24:57	
24:8		24:33		24:58	
24:9		24:34		24:59	
24:10	✓	24:35		24:60	
24:11	✓	24:36		24:61	
24:12	✓	24:37		24:62	
24:13	✓	24:38		24:63	
24:14	✓	24:39		24:64	
24:15	✓	24:40		24:65	
24:16		24:41		24:66	
24:17	✓	24:42		24:67	
24:18	✓	24:43		24:68	
24:19		24:44		24:69	
24:20		24:45		24:70	
24:21		24:46		24:71	
24:22		24:47		24:72	
24:23		24:48		24:73	
24:24		24:49		24:74	
24:25		24:50		24:75	