

of proposed rulemaking, is amended by revising paragraph (b) to read as follows:

§ 1.1033(f)-1 Condemnation of real property held for productive use in trade or business or for investment.

(b) *Special rule for period within which property must be replaced.* In the case of a disposition described in paragraph (a) of this section, section 1033(a)(2)(B) and § 1.1033(a)-2(c)(3) (relating to the period within which the property must be replaced) shall be applied by substituting 3 years for 2 years. This paragraph shall apply to any disposition described in section 1033(f)(1) and paragraph (a) of this section occurring after December 31, 1974, unless a condemnation proceeding with respect to the property was begun before October 4, 1976. Thus, regardless of when the property is disposed of, the taxpayer will not be eligible for the 3-year replacement period if a condemnation proceeding was begun before October 4, 1976. However, if the property is disposed of after December 31, 1974, and the condemnation proceeding was begun (if at all) after October 3, 1976, then the taxpayer is eligible for the 3-year replacement period. For the purposes of this paragraph, whether a condemnation proceeding is considered as having begun is determined under the applicable State or Federal procedural law.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: May 18, 1979.

Daniel I. Halperin,
Acting Assistant Secretary of the Treasury.

Paragraph 1. Section 1.1033(a)-1 is amended by striking out "§ 1.1033(b)-1" each place it appears and inserting in lieu thereof "§ 1.1033(a)-3", by striking out "§ 1.1033(c)-1" and inserting in lieu thereof "§ 1.1033(b)-1", by striking out "§§ 1.1033(d)-1, 1.1033(e)-1, and 1.1033(f)-1" and inserting in lieu thereof "§§ 1.1033(c)-1, 1.1033(d)-1, and 1.1033(e)-1", by striking out "§ 1.1033(g)-1" and inserting in lieu thereof "§ 1.1033(f)-1", and by deleting the next to the last sentence of paragraph (a).

Par. 2. Section 1.1033(a)-2 is amended by striking out "section 1033(a)(3)" each place it appears and inserting in lieu thereof "section 1033(a)(2)", by striking out "section 1033(c)" each place it appears and inserting in lieu thereof "section 1033(b)", by deleting the first sentence of paragraph (a), by revising the heading of § 1.1033(a)-2, and by adding flush material following subdivision (ii) of paragraph (c)(3). The

revised and added material reads as follows:

§ 1.1033(a)-2 Involuntary conversion into similar property, into money or into dissimilar property.

(c) *Conversion into money or into dissimilar property.*

(3) * * *

See section 1033(f)(4) and § 1.1033(f)-1 for the circumstances under which, in the case of the conversion of real property held either for productive use in trade or business or for investment, the 2-year period referred to in this paragraph (c)(3) shall be extended to 3 years.

§§ 1.1033(a)-3 and 1.1033(a)-4 [Deleted]

Par. 3. Sections 1.1033(a)-3 and 1.1033(a)-4 are deleted.

§ 1.1033(b)-1 [Redesignated as § 1.1033(a)-3 and Amended]

Par. 4. Section 1.1033(b)-1 is redesignated as § 1.1033(a)-3 and is amended by deleting the third and fourth sentences, and by striking out "section 1034(i)(2)" and inserting in lieu thereof "section 1034(i)".

§ 1.1033(c)-1 [Redesignated as § 1.1033(b)-1 and Amended]

Par. 5. Section 1.1033(c)-1 is redesignated as § 1.1033(b)-1 and is amended by striking out "section 1033(c)" each place it appears and inserting in lieu thereof "section 1033(b)".

§ 1.1033(d)-1 [Redesignated as § 1.1033(c)-1 and Amended]

Par. 6. Section 1.1033(d)-1 is redesignated as § 1.1033(c)-1 and is amended by striking out "section 1033(d)" each place it appears and inserting in lieu thereof "section 1033(c)".

§ 1.1033(e)-1 [Redesignated as § 1.1033(d)-1]

Par. 7. Section 1.1033(e)-1 is redesignated as § 1.1033(d)-1.

Par. 8. Section 1.1033(f)-1 is redesignated as § 1.1033(e)-1 and is amended by striking out "section 1033(f)" each place it appears and inserting in lieu thereof "section 1033(e)".

§ 1.1033(g)-1 [Redesignated as 1.1033(f)-1 and Amended]

Par. 9. Section 1.1033(g)-1 is redesignated as § 1.1033(f)-1 and is amended by redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b) and by revising

redesignated paragraph (c). The added and revised material reads as follows:

§ 1.1033(f)-1 Condemnation of real property held for productive use in trade or business or for investment.

(b) *Special rule for period within which property must be replaced.* In the case of a disposition described in paragraph (a) of this section, section 1033(a)(2)(B) and § 1.1033(a)-2(c)(3) (relating to the period within which the property must be replaced) shall be applied by substituting 3 years for 2 years. This paragraph shall apply to any disposition described in section 1033(f)(1) and paragraph (a) of this section occurring after December 31, 1974, unless a condemnation proceeding with respect to the property was begun before October 4, 1976. Thus, regardless of when the property is disposed of, the taxpayer will not be eligible for the 3-year replacement period if a condemnation proceeding was begun before October 4, 1976. However, if the property is disposed of after December 31, 1974, and the condemnation proceeding was begun (if at all) after October 4, 1976, then the taxpayer is eligible for the 3-year replacement period. For the purposes of this paragraph, whether a condemnation proceeding is considered as having begun is determined under the applicable State or Federal procedural law.

(c) *Limitation on application of special rule.* This section shall not apply to the purchase of stock in the acquisition of control of a corporation described in section 1033(a)(2)(A).

§ 1.1033(h)-1 [Redesignated as § 1.1033(g)-1 and Amended]

Par. 10. Section 1.1033(h)-1 is redesignated as § 1.1033(g)-1 and is amended by striking out "§ 1.1033(f)-1 and § 1.1033(g)-1" and inserting in lieu thereof "§ 1.1033(e)-1 and § 1.1033(f)-1."

§ 1.1034-1(h)(1) [Amended]

Par. 11. Section 1.1034(h)(1) is amended by striking out "§ 1.1033(b)-1" and inserting in lieu thereof "§ 1.1033(a)-3."

§ 1.1033(a)-1.1033(h) [Deleted]

Par. 12. The following sections are deleted: § 1.1033(a) and the historical note; § 1.1033(b); § 1.1033(c); § 1.1033(d); § 1.1033(e); § 1.1033(f) and the historical note; § 1.1033(g) and the historical note; and § 1.1033(h) and the historical note.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 43a

[DOD Directive 1344.9]¹

indebtedness of Military Personnel

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule revises Department of Defense (DOD) policies regarding the processing of claims of delinquent indebtedness against members of the Armed Forces, incorporating provisions of (a) the Truth in Lending Act, and (b) the recently enacted Fair Debt Collection Practices Act which prohibits debt collection agencies from contacting third parties.

EFFECTIVE DATE: May 7, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Schoenberger, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), The Pentagon, Washington, D.C. 20301, Telephone 202-697-9525.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-11263 appearing in the *Federal Register* on April 26, 1978 (43 FR 17838), the Office of the Secretary of Defense published a proposed rule establishing guidelines for the Military Departments in the handling and processing of claims of delinquent indebtedness against military members of the Armed Forces. In FR Doc. 78-14870 appearing in the *Federal Register* on May 30, 1978 (43 FR 23001) the Office of the Secretary of Defense published an extension of the comment period. Comments received suggested minor changes in the "Standards of Fairness" which were incorporated into the final rule.

Accordingly, we are revising Part 43a 32 CFR Chapter I, reading as follows:

PART 43a—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.

- 43a.1 Reissuance and purpose.
- 43a.2 Applicability and scope.
- 43a.3 Definitions.
- 43a.4 Responsibilities.
- 43a.5 General policies.
- 43a.6 Debt processing procedures.
- 43a.7 Abuse of the processing privilege.
- 43a.8 Full disclosure and standards of fairness by creditors.
- 43a.9 Standards of fairness.
- 43a.10 Certificate of Compliance.

Authority: The provisions of this Part 43a issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301.

§ 43a.1 Reissuance and Purpose.

This Part: (a) Reissues Part 43a to update established Department of Defense policy governing delinquent indebtedness of military members of the Armed Forces;

(b) Sets forth procedures for processing claims of such indebtedness against military members; and

(c) Incorporates the provisions of Pub. L. 90-321, "Truth in Lending Act," Section 125 (15 U.S.C. 1601 (1976)) and 95-109, "Fair Debt Collection Practices Act," September 20, 1977.

§ 43a.2 Applicability and Scope.

(a) The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DOD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) Excluded from the provisions of this Part are claims for support of dependents, or claims by the Federal, State, or municipal Government.

§ 43a.3 Definitions.

(a) *Just Financial Obligations.* A legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment which conforms to 50 U.S.C. app. 501, if applicable.

(b) *A Proper and Timely Manner.* A manner which under the circumstances does not reflect discredit on the military service.

(c) *Debt Collector.* An agency or agent solely engaged in the collection of debts described under Pub. L. 95-109.

§ 43a.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall establish policies and procedures governing the assistance to be provided by military authorities to creditors of military personnel.

(b) The *Heads of DoD Components*, or designees, shall:

(1) Urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all DoD personnel 32 CFRs 230, 231, and 40.

(2) Assure implementation of this Part and compliance with its provisions.

§ 43a.5 General Policies.

(a) Members of the Armed Forces are expected to pay their just financial obligations in a proper and timely manner. However, DoD Components have no legal authority, except as stated in § 43a.5(b) below, to require members to pay a private debt or to divert any part of their pay for its satisfaction, even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.

(b) Legal process instituted in civil courts to enforce judgments against military personnel for the payment of alimony or child support will be acted upon in accordance with the provisions of Pub. L. 93-647, as amended (42 USC 659 (1976)), and part 7, chapter 7, section B of DoD Military Pay and Allowances Entitlements Manual.²

(c) The processing of debt complaints will not be extended to those (1) who have not made a bona fide effort to collect the debt directly from the military member; (2) whose claims are patently false and misleading; or (3) whose claims are obviously exorbitant. Claimants desiring to contact a military member about indebtedness may obtain the member's military address by writing to the locator service of the Military Department concerned, and enclosing the appropriate fee for the service, as provided under (32 CFR 288).

(d) Some States have enacted laws which prohibit creditors from contacting a debtor's employer with respect to indebtedness or communicating facts on indebtedness to an employer unless certain conditions are met. The conditions which must be met to remove this prohibition are generally such things as reduction of a debt to judgment and obtaining written permission of the debtor.

(1) At DoD installations in States having such laws, the processing of debt complaints will not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

(2) This policy will govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice will be inaugurated in any State enacting a similar law with respect to debt collection.

² Available through normal DoD publications channels.

¹ Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

(e) Under the provisions of Pub. L. 95-109, contact by a debt collector with third parties, such as commanding officers, for the purpose of aiding debt collection is prohibited without the prior consent of the debtor, given directly to the debt collector, or without a court order. Creditors are generally exempt from Pub. L. 95-109, but only when they collect on their own behalf.

§ 432.6 Debt Processing Procedures.

(a) It is incumbent on those submitting indebtedness complaints to show that the disclosure requirements of Pub. L. 90-321 and Regulation Z (12 CFR 226, 226.3, 226.9 (1978)) have been met and that the Standards of Fairness § 43a.9 have been applied.

(b) Creditors subject to Regulation Z, and assignees claiming thereunder, shall submit with their request for debt processing assistance an executed copy of the Certificate of Compliance (enclosure 2), and a true copy of the general and specific disclosures provided the military member as required by Pub. L. 90-321. Requests which do not meet these requirements will be returned without action to the claimant.

(c) A creditor not subject to Regulation Z, such as a public utility company (as set forth in section 226.3 thereof), shall submit with the request a certification that no interest, finance charge, or other fee is in excess of that permitted by the law of the State in which the obligation was incurred.

(d) A foreign-owned company having debt complaints shall submit with its request a true copy of the terms of the debt (English translation) and shall certify that it has subscribed to the Standards of Fairness (§ 43a.9).

(e) Indebtedness complaints which meet the requirements of the Part will be processed by DoD Components. "Processed" means that Heads of DoD Components, or designees, shall:

(1) Review all available facts surrounding the transaction forming the basis of the complaint, including the member's legal rights and obligations, and any defenses or counterclaims the member may have.

(2) Advise the member that (i) just financial obligations are expected to be paid in a proper and timely manner, and what the member should do to comply with that policy; and (ii) financial and legal counseling services are available under the provisions of (32 CFR 43) in resolving indebtedness.

(3) If a member acknowledges a debt as a result of creditor contact with a DoD Component, advise the member that assistance and counseling are

available from the on-base military banking office and the credit union serving the military field of membership.

(4) Direct that the appropriate commander advise the claimant that (i) those aspects of DoD policy prescribed in § 43a.5, are pertinent to the particular claim in question; and (ii) the member concerned has been counseled concerning his or her obligations with respect to the claim. The commander's response will not undertake to arbitrate any disputed debt, or to admit or deny the validity of the claim. Under no circumstances will the response indicate whether any action has been taken against the member as a result of the complaint.

§ 43a.7 Abuse of the Processing Privilege.

DoD Components may promulgate policies and procedures that will deny any claimant the processing of the claim where:

(a) A claimant, having been notified of the requirements of this Directive, refuses or repeatedly fails to comply with them; or

(b) A claimant, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege.

§ 43a.8 Full Disclosure and Standards of Fairness by Creditors.

Pub. L. 90-321 prescribes the general disclosure requirements which must be met by those offering or extending consumer credit, and Regulation Z prescribes the specific disclosure requirements for both open-end and installment credit transactions. In place of Federal Government requirements, State regulations apply to credit transactions when the Federal Reserve Board has determined that the State regulations impose substantially similar requirements and provide adequate enforcement measures. Commanding officers should check regulations of the Federal Reserve Board to determine whether Federal or State laws and regulations govern.

§ 43a.9 Standards of Fairness.

(a) No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed in the United States by the military member.

(1) In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

(2) However, interest rates and service charges applicable to overseas military banking facilities will be established by the Department of Defense.

(b) No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

(c) In loan transactions, defenses which the debtors may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have appraised the holder of this fact.

(d) The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

(e) No late charge shall be made in excess of 5 percent of the late payment, or \$5.00 whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed, but payment of the allotment has been delayed. Late charges by overseas banking facilities are a matter of contract with the Department of Defense. Late charges by Federal credit unions are set at 20 percent of the interest due with a minimum of not less than 5 cents.

(f) The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment that portion of the finance charges which has inured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied.

(g) If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

(h) If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

(i) If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will be governed by the laws of the State in which the security is requested.

(j) A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in preproduction costs, or require preparation for delivery, such additional costs will be listed in the order form or contract.

(1) No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion.

(2) The purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by Pub. L. 90-321 and the FRB Regulation Z.)

§ 43a.10 Certificate of Compliance.

I certify that the _____
(Name of Creditor) upon extending credit to _____
(Name of Obligor) on _____
(Date) complied with the full disclosure requirements of the Truth-in-Lending Act and Regulation Z, and the Fair Debt Collection Practices Act (or the laws and regulations of State of _____), and that the attached statement is a true copy of the general and specific disclosures provided the obligor as required by law.

I further certify that the Standards of Fairness set forth in § 43a have been applied to the consumer credit transaction to which this form refers. (If the unpaid balance has been adjusted as a consequence, the specific adjustments in the finance charge and the annual percentage rate should be set forth below.)

(Adjustments)

(Date of Certification)

(Signature of Creditor or
Authorized Representative)

(Street)

(City, State and Zip Code)

H. E. Lofdahl,

Director, Directives Division, Washington
Headquarters Services, Department of
Defense.

May 24, 1979.

[FR Doc. 79-16772 Filed 5-29-79; 8:45 am]

BILLING CODE 3910-70-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 5-1, 5A-1, 5B-1

Reestablishment of Chapter 5 and Change in Issuing Authority for Chapters 5A and 5B

Correction

In FR Doc. 79-15872 appearing at page 29668 in the issue of Tuesday, May 22, 1979, the heading should read as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Part 185

Emergency School Aid

AGENCY: Office of Education, HEW.

ACTION: Final Rule.

SUMMARY: This rule governs the award of fiscal year 1979 grants to State educational agencies (SEAs) to help local educational agencies (LEAs) desegregate their schools voluntarily.

EFFECTIVE DATE: This rule is expected to take effect 45 days after it is transmitted to Congress. This rule will be transmitted to Congress several days before it is published in the *Federal Register*. The effective date is changed by statute if Congress disapproves the provisions of this rule or takes certain adjournments. If you want to know the effective date of this rule, call or write the Office of Education contact person.

ADDRESSES: Comments should be addressed to Ethel Jackson, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:
Ethel Jackson, Telephone (202) 245-8230.

SUPPLEMENTARY INFORMATION: Under the authority of the Emergency School Aid Act ("ESAA" or "the Act"; 20 U.S.C. 1601 *et seq.*) and, in particular, the authority to carry out special programs and projects under 20 U.S.C. 1607(a)(2), the Commissioner of Education—to whom the Assistant Secretary for Education has delegated functions under the Act—announces this rule governing fiscal year 1979 assistance to SEAs.

Background

The Commissioner believes SEAs should be encouraged to play a larger role in planning and implementing voluntary desegregation in the school districts of their States.

SEAs currently receive funds under Title IV of the Civil Rights Act of 1964 ("title IV") to provide technical assistance and training to public school districts in connection with race desegregation. However, those funds may be used only to assist districts that are correcting conditions of racial separation resulting from State or local law or official action (see 45 CFR 180.04).

Many districts that are not eligible for race desegregation assistance under title IV have desegregation-related needs similar to those of eligible districts. The program described in this document will enable SEAs to help meet those needs.

The financial assistance that the Commissioner provides under the ESAA to SEAs may be used to support activities authorized by that statute, including many of the activities carried out by recipients of race desegregation awards under title IV. The Commissioner has determined that grants to SEAs to assist LEAs with voluntary desegregation will make substantial progress toward achieving the purposes of the Act. Therefore, the Commissioner has reserved for this purpose \$2,000,000 of the fiscal year 1979 appropriation for ESAA special projects.

Because this program is designed to complement SEA race desegregation assistance under title IV, authorized activities are substantially identical to those authorized for title IV (see 45 CFR 180.13(d)). However, to ensure that this program focuses on voluntary desegregation efforts, grantees may assist only LEAs that have plans for which title IV race desegregation assistance is not available.

This program will operate for one year only. The Congress has amended the Act by adding authority beginning in fiscal year 1980 for matching grants to State agencies to help LEAs develop and

implement voluntary plans to eliminate or reduce minority group isolation in their schools. (See section 608(c) of the Act, as redesignated and amended by section 601(a) of Pub. L. 95-561.) Thus, the provisions of this rule are effective for fiscal year 1979 awards only.

Waiver of Proposed Rulemaking Procedures

Ordinarily, in accordance with section 431(b)(2)(A) of the General Education Provisions Act ("GEPA"; 20 U.S.C. 1232(b)(2)(A)), it is the practice of the Commissioner to offer interested parties the opportunity to review and comment on proposed regulations. However, for the reasons described below the Commissioner has determined that the usual practice should not be followed.

The provisions in this rule are needed to provide assistance to SEAs in a timely and prudent manner. For the program to be most effective, SEAs must be prepared to provide assistance in advance of the school year beginning in the fall of 1979. Before SEAs can provide this assistance, they will need time to hire staff, obtain materials, and notify LEAs in their respective States that assistance is available. These considerations require that the provisions of this rule be in effect, and fiscal year 1979 grants under this program be made, as early as possible.

The provisions of this rule are subject to the delayed effective date provisions of section 431(d) of GEPA (20 U.S.C. 1232(d)). While the period of delay specified in that section is 45 days, a delay of up to 84 days is possible as a result of provisions concerning Congressional adjournment. The period of delay runs from the date the final rule is transmitted to the Congress.

Resort to normal rulemaking procedures would cause an additional delay in the effective date of the provisions of this rule. That delay would result from a period for public comment on the proposed rule and a further period for the review of any comments received and the republication of the rule in final form.

Considering the time required to use normal rulemaking procedures, the commissioner believes those procedures would prevent the timely award of assistance to SEAs. Moreover, assistance under this rule is for a one year pilot program only. Fiscal year 1980 awards to State agencies will be made under section 608(c) of the amended statute.

For these reasons, the Commissioner for good cause finds that resort to notice and comment rulemaking procedures for the provisions of this rule would be

impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b).

Accordingly, the Commissioner adopts the following rule.

(Catalog of Federal Domestic Assistance No. 13.532L, Emergency School Aid—Special Projects)

Dated: April 11, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: April 19, 1979.

Mary F. Berry,

Assistant Secretary for Education.

May 18, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Part 185 is amended by adding a new Subpart L to read as set forth below.

Subpart L—Fiscal Year 1979 State Educational Agency Grants

- Sec.
- 185.200 Purpose.
 - 185.201 Applicable regulations.
 - 185.202 Eligibility.
 - 185.203 Eligibility for assistance from a grantee.
 - 185.204 Authorized activities.
 - 185.205 Applications.
 - 185.206 Funding criteria and procedures.
 - 185.207 Post-award condition. Notification to LEAs.

Authority: Emergency School Aid Act ("ESAA") or "the Act"; 20 U.S.C. 1601 et seq.; 20 U.S.C. 1607(a)(2).

Subpart L—Fiscal Year 1979 State Educational Agency Grants

§ 185.200 Purpose.

This program provides financial assistance to State educational agencies (SEAs) for the following purposes:

(a) Encouraging local educational agencies (LEAs) voluntarily to prepare, adopt, and implement plans to correct conditions of racial separation in their schools that are not the result of State or local law or official action; and

(b) Helping LEAs identify educational problems, and solutions to those problems, that have arisen or may arise from the implementation of those plans.

(20 U.S.C. 1607(a))

§ 185.201 Applicable regulations.

Assistance provided under this program is subject to applicable provisions of 45 CFR Part 185, relating generally to programs under the Emergency School Aid Act.

(20 U.S.C. 1601-1619)

§ 185.202 Eligibility.

Any SEA may apply for a grant under this program.

(20 U.S.C. 1607(a))

§ 185.203 Eligibility for assistance from a grantee.

(a) An LEA is eligible to receive assistance from a grantee under this program if that LEA is preparing or implementing a plan described in § 185.200(a).

(b) A plan for which the LEA received race desegregation assistance after October 1, 1978, under Title IV of the Civil Rights Act of 1964, as amended, is not a qualifying plan under this section.

(20 U.S.C. 1607(a))

§ 185.204 Authorized activities.

(a) A grantee may provide technical assistance and training to an eligible LEA for the purposes described in § 185.200.

(b)(1) The grantee may provide assistance to school board members, persons who are employed by or who work in the schools of an LEA, students enrolled in those schools, parents, and other community members.

(2) However, persons to whom the grantee provides assistance must be directly affected—or reasonably likely to be directly affected—by the preparation, adoption, or implementation of a plan described in § 185.200(a).

(20 U.S.C. 1607(a))

§ 185.205 Applications.

An applicant shall include the following information in its application:

(a) A description of the expected needs of LEAs in its State for the assistance authorized under § 185.204;

(b) A statement of the basis for its identification of those needs;

(c) A description of the assistance that it would provide to LEAs expected to need assistance;

(d) The means by which it would evaluate the effectiveness of its assistance and disseminate the results of its assistance to the public and other SEAs;

(e) A description of the activities it has undertaken that demonstrate its commitment to the success of plans described in § 185.200(a);

(f) A statement of the qualifications of the project director and professional staff who would be employed under the grant;

(g) A description of their responsibilities;

(h) A description of the facilities and other resources to be used in carrying out the activities under the grant;

(i) An assessment of the materials for technical assistance and training that

are available for providing assistance under the award; and

(j) A detailed budget.

(20 U.S.C. 1607(a))

§ 185.206 Funding criteria and procedures.

(a) The Commissioner reviews applications under this program on the basis of—

(1) The criteria in the General Provisions for Office of Education Programs (45 CFR 100a.26(b)); and

(2) The applicant's commitment to the success of plans described in § 185.200(a).

(b)(1) The Commissioner sets the amount of an award by comparing—

(i) The expected needs, and the cost of providing assistance to meet them, in each State for which the Commissioner approves an application; and

(ii) The expected needs, and the cost of providing assistance to meet them, in all States for which the Commissioner approves applications.

(2) In assessing expected needs, the Commissioner considers the needs described in the applications submitted under this program and any other information concerning those needs that may be relevant.

(20 U.S.C. 1607(a))

§ 185.207 Post-award condition: Notification to LEAs.

On receiving a grant under this program, a grantee shall notify all LEAs in its State of the availability of assistance authorized under the grant.

(20 U.S.C. 1607(a))

[FR Doc. 79-16513 Filed 5-29-79; 8:45 am]

BILLING CODE 4110-02-M

ACTION

45 CFR Part 1232

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From ACTION

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: This regulation sets forth policies and procedures to insure nondiscrimination on the basis of handicap in programs and activities to which ACTION extends financial assistance. The rule is needed to comply with Section 504 of the Rehabilitation Act of 1973 as amended, and Executive Order 11914, which relate to nondiscrimination against handicapped persons. The rule follows the guidelines

established by HEW for carrying out the provisions of E.O. 11914. (See 43 FR 2132, January 13, 1978). The rule extends the coverage of Section 504 to all recipients receiving financial assistance, including the services of volunteers, from ACTION. The rule also extends the coverage of Section 504 to volunteers serving in ACTION programs.

EFFECTIVE DATE: June 29, 1979.

FOR FURTHER INFORMATION CONTACT:

Ellen W. Reath, Assistant General Counsel, ACTION, 806 Connecticut Ave., NW., Washington, D.C. 20525, (202-632-8812).

SUPPLEMENTARY INFORMATION: On May 9, 1978, ACTION published a proposed rule implementing Section 504 of the Rehabilitation Act of 1973. (43 FR 19883) Five comments were received, four from federal agencies and one from an organization representing handicapped persons. The proposed regulations were also reviewed by the Office of Civil Rights, HEW, for compliance with Executive Order 11914.

This rule implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to federal financial assistance administered by ACTION. Section 504 prohibits qualified handicapped persons from being denied the benefits of, or participation in, any federally assisted program. The proposed rule applies to all recipients of financial assistance from ACTION including organizations which receive volunteers from ACTION, but no funds.

This includes the volunteer programs such as VISTA, University Year for ACTION, Foster Grandparent Program, Retired Senior Volunteer Program and Senior Companion Program, as well as any other programs under which recipients receive financial assistance, such as special demonstration grants. The rule does not apply to organizations overseas which receive assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended.

The rule forbids discrimination against qualified handicapped persons in employment and in the operation of programs receiving assistance from ACTION, including the recruitment, selection and placement of volunteers. Recipients must make reasonable accommodation to the handicaps of employees, and volunteers unless the accommodations would cause the recipient undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner.

Some minor changes have been made in order to bring the regulation into compliance with the HEW guidelines. Following is a summary of the principal comments and substantive revisions to the regulation.

1. Several government agencies suggested that the regulation be amended to include language dealing with program accessibility in historic properties. This suggestion was not adopted as the agency is of the opinion that this problem can best be handled through the regulations of the agencies charged with protecting such properties.

2. One commentator criticized several sections of the proposed rule that were taken from the HEW guidelines as being too weak and not affording enough protection to the severely handicapped. The agency feels that the language from the HEW guidelines is adequate.

3. Section 1232.14 has been revised to include a requirement that recipients develop transition plans within six months if structural modifications in existing facilities are needed.

4. Subpart B has been revised to reflect the fact that a recipient's responsibilities toward handicapped volunteers serving in ACTION programs are the same as its responsibilities toward handicapped employees.

5. Section 1232.8(c) has been revised to include a record keeping provision for self-evaluations performed by recipients, and to make it clear that each step of the self evaluation must be done in consultation with interested persons, including handicapped persons.

In consideration of the foregoing, Part 1232 is hereby added to Title 45 of the Code of Federal Regulations as set forth below:

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

Subpart A—General Provisions

- 1232.1 Purpose.
- 1232.2 Application.
- 1232.3 Definitions.
- 1232.4 Discrimination prohibited.
- 1232.5 Assurances required.
- 1232.6 Notice.
- 1232.7 Remedial action, voluntary action and self-evaluation.
- 1232.8 Effect of state or local law.

Subpart B—Employment and Volunteer Service Practices

- 1232.9 Discrimination prohibited.
- 1232.10 Reasonable accommodation.
- 1232.11 Employment and volunteer selection criteria.
- 1232.12 Preemployment or pre-selection inquires.

Subpart C—Program Accessibility

- 1232.13 Discrimination prohibited.
 1232.14 Existing facilities.
 1232.15 New construction.

Subpart D—Procedures

- 1232.16 Procedures.

Authorities: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

Subpart A—General Provisions**§ 1232.1 Purpose.**

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives or benefits from such assistance, including volunteer programs such as VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended.

§ 1232.3 Definitions.

As used in this part the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and the Rehabilitation Act Amendments of 1978, Pub. L. 95-602.

(b) "Section 504" means section 504 of the Act.

(c) "Director" means the Director of ACTION.

(d) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Applicant for assistance" means one who submits an application, request, or plan required to be approved

by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement which provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal property or any interest in or use of such property, including:
 - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.
- (4) A Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers under the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4951, Pub. L. 93-113, as amended.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) Handicapped person.

(1) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment, except that as it relates to employment or volunteer service the term "handicapped person" does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment or volunteer service, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific

learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(j) "Qualified handicapped person" means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(k) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

(l) "Volunteer" and "Volunteer service" refers to any person serving as a full time or part-time volunteer under any programs authorized under the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, as amended.

(m) "Work station" means any public or private agency, institution, organization or other entity to which volunteers are assigned by a recipient.

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity to which this part applies.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative

control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, volunteers and beneficiaries are available to persons with impaired vision and hearing.

(f) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance from ACTION because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

§ 1232.5 Assurances required.

(a) An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(c) A recipient operating a volunteer program under which volunteers are

assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

§ 1232.6 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, volunteers and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of Section 504 and this part.

§ 1232.7 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* Recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each

recipient shall with the assistance of and consultation with interested persons, including handicapped persons, evaluate its current policies, practices and effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 1232.8 Effect of state or local law.

The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

Subpart B—Employment and Volunteer Service Practices

§ 1232.9 General prohibitions against employment and volunteer service discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment or volunteer service under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment or volunteer service under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees or volunteers in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment and volunteer service applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment or volunteer service;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment or volunteer service, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment or volunteer service.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants, volunteers or employees, to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(f) Recipients operating a volunteer program under which volunteers are assigned to work in a number of work stations will assure that a representative sample of work stations are accessible to handicapped persons.

§ 1232.10 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant, employee or volunteer unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees or volunteers readily accessible to and usable by

handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1232.8(b) or when a recipient is taking affirmative action pursuant to Section 503 of the Act, the recipient may invite applicants for employment or volunteer service to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no

written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided*, That: (1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily

accessible and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan which sets forth in detail the steps necessary to complete the changes, and a schedule for taking those steps. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the plan shall be made available for public inspection.

§ 1232.15 New construction.

(a) New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. construction shall be considered new if ground breaking takes place after the effective date of the regulation. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) Design, construction or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971), which is incorporated by reference in this part, shall constitute compliance with this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964

apply to this part. These procedures are found in §§ 1203.6-1203.11 of this title.

Issued in Washington, D.C. on May 10, 1979.

Sam Brown,
Director, ACTION.

[FR Doc. 79-16773 Filed 5-29-79; 8:45 am]

BILLING CODE 6050-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Poverty Guidelines; Maximum Income Levels; Correction

AGENCY: Legal Services Corporation.

ACTION: Final rule—Correction.

SUMMARY: On May 15, 1979 (44 FR 28329 (May 15, 1979)) the Legal Services Corporation published revised eligibility guidelines for its grantees. The figure for a non-farm family of two, for all states except Alaska and Hawaii, should be \$5,625, not \$5,525 as published.

EFFECTIVE DATE: May 30, 1979.

FOR FURTHER INFORMATION CONTACT: Barbara Allen, Legal Services Corporation, 733 15th Street, N.W., Suite 700, Washington, D.C. 20005, 202-376-5113.

Stephen S. Walters,
Acting General Counsel, Legal Services Corporation.

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